The Christian Medical & Dental Associations was founded in 1931 and currently serves more than 19,000 members; coordinates a network of Christian healthcare professionals for personal and professional growth; sponsors student ministries in medical and dental schools; conducts overseas healthcare projects for underserved populations; addresses policies on healthcare, medical ethics and bioethical and human rights issues; distributes educational and inspirational resources; provides missionary healthcare professionals with continuing education resources; and conducts international academic exchange programs.
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1. WHAT IS HEALTHCARE RIGHT OF CONSCIENCE?

COMMON TERMS AND DEFINITIONS

Conscience: The faculty of recognizing the distinction between right and wrong in regard to one’s own conduct; conformity to one’s own sense of right conduct.¹

Hippocratic Oath: Written during the 4th century B.C. by Hippocrates, the father of modern medicine; it is an oath stating the obligations and proper conduct of doctors, formerly taken by those beginning medical practice. A recent study revealed that only 43 percent of responding schools still used the classic Hippocratic Oath, with an additional 42 percent using some other oath.²

Protection of Conscience Laws: Ensure that people cannot be forced to facilitate practices or procedures to which they object for reasons of conscience. These may include abortion, capital punishment, contraception, sterilization, artificial reproduction, euthanasia, assisted suicide, human experimentation, torture, etc. An adequate protection of conscience law should protect conscientious objectors from coercive hiring or employment practices, discrimination and other forms of punishment or pressure. It should also include protection from civil liability.³

Conscience Clauses: These are usually less comprehensive than protection of conscience laws and afford varying degrees of protection for conscientious objectors. They may appear in statutes or in the policies of organizations or institutions.⁴

Healthcare Right of Conscience: It is the right of institutions and healthcare professionals to exercise their conscience and refusal to participate in or cooperate with certain medical practices or procedures they deem morally, ethically or religiously objectionable.

“The right of choice is foundational in our healthcare process, and it applies to both healthcare professionals and patients alike. Issues of conscience arise when some aspect of medical care is in conflict with the personal beliefs and values of the patient or the healthcare professional.” —CMDA Ethics Statement on Healthcare Right of Conscience¹⁰
RATIONALE FOR A RIGHT OF CONSCIENCE

Until recently, there has been question of healthcare professionals’ right to practice according to their conscience. However, with increasing clashes on ethical issues in healthcare, the rights of physicians and other healthcare professionals are under attack. It reaches beyond doctors in an examine room to pharmacists who are unable to fulfill prescriptions for progesterone-only contraceptives or lethal doses of medications for assisted suicide due to their moral beliefs. The American Civil Liberties Union (ACLU) and many pro-abortion groups have established well-funded programs to eliminate what they call the “right of refusal.”

Right of Conscience and the Bible

Obedience to conscience is obligatory for all Christians. Here are some biblical guidelines to go by when addressing healthcare rights of conscience issues.

1. We must avoid every kind of evil (1 Thessalonians 5:22).
2. We must hate and oppose evil (Romans 12:9).
3. We should separate ourselves from evil (2 Corinthians 6:17).
4. We should overcome evil with good (Romans 12:21).
5. We should seek wisdom (James 1:2-5).

Hippocratic Oath

In the days of Hippocrates, a patient could never be certain if their physician had the intent to heal them or if they would carry out a treatment that would undoubtedly end in the patient’s death. Seeing this problem, in the 4th century B.C. a man named Hippocrates, often referred to as the “father of medicine,” wrote what is now widely known as the Hippocratic Oath. In essence, the Hippocratic Oath brought a sense of order and accountability to the field of medicine. The creation of the oath was the first step in preventing unnecessary pain to patients, which included many treatments that were inhumane and, in many cases, led to a patient’s death instead of their recovery. It was a call for physicians to put their patient’s well-being before their own agendas or rewards.

In order for a student to become a physician, he or she had to sign this oath as a covenant to their patients that they would uphold a number of medical ethical standards, including the infamous prohibition to “do no harm.”

Today, most medical schools do not require a medical student to take the Hippocratic Oath upon graduation, and many of those that do require their students to take the oath have modified it or even offer their graduates the option to write their own oath. While some modifications have been made simply due to advancements in medicine (for example, in Hippocrates’ time surgery was not a recognized field, so the oath was modified to allow surgical procedures), other modifications that have been made bring into question if the purpose is still to “do no harm,” such as omitting sections of the oath that originally forbade abortion and euthanasia.
The First Amendment and Right of Conscience

According to James Madison, one of our founding fathers, the right of conscience is the most sacred of all property. This is clearly demonstrated in the First Amendment in the Bill of Rights, which states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” Before the First Amendment was made more concise it read, “The Civil Rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, nor on any pretext infringed.”

Right of conscience does not mean discrimination because a healthcare professional doesn’t approve of a patient’s decisions or lifestyle. Healthcare professionals exercise their right of conscience when they are asked to become morally complicit by participating in an action they consider immoral. It may be prescribing birth control pills, helping an unwed couple become pregnant or dispensing the morning after pill that can cause the death of a developing embryo. For all healthcare professionals, as well as for non-healthcare professionals, what benefit does freedom of religion bring us if we cannot adhere to our deeply held beliefs? This issue pits the basic right of conscience against the patient’s frivolous right of convenience since they have to go elsewhere to get the service they desire.

Present Protections are Inadequate

The Law and Regulations

As far as setting the law on this controversial issue goes, one of the main concerns that is repeatedly displayed is deciding who should have the final say: healthcare professionals or their patients. Each state in the United States has its own set of conscience laws. At the time of this publication, 45 states have some sort of conscience laws on the issue of abortion alone.

While some states recognize the importance of protecting healthcare professionals’ conscience rights, some have or are in the process of eliminating some of these protective measures. For example, in 2008 the state of California questioned the validity of the Weldon Amendment, which prohibits government authorities from requiring any healthcare professional or institution to participate in or pay for abortions. Fortunately, in January 2020, the U.S. Department of Health and Human Services (HHS) issued a Notice of Violation to California because of its Abortion Coverage Mandate.9 This was the second time the Office of Civil Rights had found California in violation of federal conscience statutes.
The American Medical Association’s (AMA) Statement on Healthcare Right of Conscience says this, “Preserving opportunity for physicians to act (or to refrain from acting) in accordance with the dictates of conscience in their professional practice is important for preserving the integrity of the medical profession as well as the integrity of the individual physician, on which patients and the public rely. Thus physicians should have considerable latitude to practice in accord with well-considered, deeply held beliefs that are central to their self-identities.” However, the AMA statement goes on to say: “Physicians’ freedom to act according to conscience is not unlimited, however. Physicians are expected to provide care in emergencies, honor patients’ informed decisions to refuse life-sustaining treatment, and respect basic civil liberties and not discriminate against individuals in deciding whether to enter into a professional relationship with a new patient.”

CMDA’s Ethics Statement on Healthcare Right of Conscience states:

“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. In such circumstances, healthcare professionals have an obligation to ensure that the patient’s records are transferred to the healthcare professional of the patient’s choice.”

Several pharmacist associations have also made official statements concerning the rights of pharmacists.

- American Pharmacists Association (APhA), Code of Ethics: “A pharmacist has a duty to tell the truth and to act with conviction of conscience.”

- American Society of Health-System Pharmacists (ASHP): “...recognize the right of pharmacists, as healthcare providers, and other pharmacy employees to decline to participate in therapies they consider to be morally, religiously or ethically troubling.”

However, the healthcare professional’s right of conscience is being challenged by numerous groups and individuals today. If the patient’s conscience should trump their doctor’s conscience, medical professionals will become nothing more than healthcare vending machines—dispensing whatever healthcare the patient demands, whether it is really in the patient’s best interest or not. To strip healthcare professionals of their conscience is reverting society back to the time before the Hippocratic Oath, when a patient did not know if they would leave the office better or worse than how they arrived. The last and best protection of all patients is a healthcare professional with conscience.
We are experiencing a time with a rampant overemphasis on and a distortion of the right of autonomy. Autonomy protects a patient’s right to make informed decisions for themselves, but it does not give the right to force others to do something which abuses their right of autonomy. Even though this is not a new issue (the moral debate began 2,500 years ago, before the Hippocratic Oath), it has certainly made new waves in recent years.

“The right of refusal” is a term that has recently emerged when talking about the healthcare right of conscience, especially in the area of reproductive rights. Opponents to healthcare right of conscience for healthcare professionals argue that it interferes with the “right” to access healthcare. The important question to ask is whether patients are being denied care or simply inconvenienced. Should Target be forced to carry a product, just so you don’t have to go down the road to Walmart?

Several organizations have made their opinions on this topic known. For example, pro-choice group Planned Parenthood has said this about healthcare conscience rights:

- “So-called ‘religious refusal’ laws or ‘conscience protections’ allow most any health care worker, including pharmacists and volunteers, to deny patients access to services the health care worker deems contrary to their personal beliefs.”
- “Refusal laws and conscience protection acts are already implemented in several states and are nothing more than a license to discriminate in health care.”

In 2016, the American College of Obstetricians and Gynecologists (ACOG) reaffirmed an ethical statement called, “Committee Opinion #385 – Limits of Conscience Refusal in Reproductive Medicine.” In this statement, ACOG states the following:

- “Although respect for conscience is a value, it is only a prima facie value, which means it can and should be overridden in the interest of other moral obligations that outweigh it in a given circumstance. Professional ethics requires that health be delivered in a way that is respectful of patient autonomy, timely and effective, evidence based, and nondiscriminatory. By virtue of entering the profession of medicine, physician accept a set of moral values—and duties—that are central to medical practice.”
**Most Threatened Health Issues**

Although there are a number of medical procedures could be deemed controversial, three areas of healthcare are rapidly seeing more and more arguments in relation to conscience rights. The first is not a new topic of debate by any means. Abortion has been a highly debated procedure from its beginning for a wide variety of groups. However, many healthcare professionals, ranging from medical students to pharmacists to physicians and nurses, are being discriminated against for their moral beliefs that abortion is a procedure with eternal effects. In some situations, students are forced or pressured into participating in an abortion, while pharmacists in many states have already lost their right to decline dispensing drugs that terminate the life of a developing human being.

This leads into another of the three highly threatened health issues, which are reproductive technologies and rights. Procedures such as in-vitro fertilization are commonly used to address infertility, bringing multiple concerns in this area. For example, should a physician be forced to perform, in vitro fertilization (IVF) for an unmarried couple if that physician believes children are happier and healthier when they are raised by a married couple? Should a healthcare professional who believes in the sanctity of keeping sexual relations limited to a husband and wife be forced to prescribe sexual performance drugs to single, unmarried patients? The arena of reproductive technologies and rights is an arena where healthcare professionals' right of conscience is increasingly being challenged.

Another health issue that brings concerns for the healthcare professional is physician-assisted suicide. At the time of this publication, 10 states in the Unites States have legalized physician-assisted suicide, and several others are preparing to introduce legislation that would legalize physician-assisted suicide.¹⁶ Life-honoring healthcare professionals and pharmacists do not want to be a part of this lethal procedure. Physician-assisted suicide is in direct violation of the Hippocratic Oath, in which physicians vow to do no harm, nor to kill.

It is essential that healthcare professionals are able to keep the freedom to practice under their moral compasses not only in the three areas above, but in all areas of healthcare. Other areas, such as stem cell research, cloning, genetic enhancement, human/animal chimeras and transhumanism are all waiting in the wings. Patients need to know their healthcare professionals are able to practice with their conscience intact. They need to know they will be protected.
3. Right of Conscience — Do We Still Have a Right?

Legal and Regulatory Challenges

As mentioned previously, there are many federal and state protections for healthcare professionals. However, several of those rights have been drawn into question and brought to court. For more information on recent court cases that CMDA has been involved in regarding right of conscience, please see the listing of recent court cases on Freedom2Care at https://www.freedom2care.org/court-cases/.

Current Effects on Individuals

Numerous individuals are affected by this issue. Healthcare professionals are forced to participate in procedures and actions they do not believe are morally sound. Insurance companies are forced to provide for elective abortions. Researchers are forced to conduct experiments they deem ethically objectionable. Nurses are forced to participate in end of life actions (of all stages of life) they do not agree with. Medical students are reluctant to go into specialties where they may be forced to violate their conscience.

Stronger protections for the right of conscience for healthcare professionals are necessary.

Testimonies

The following are just a few of the many testimonies that CMDA has received from its members about how they have been discriminated against in their workplace for following their conscience.

Family medicine physician forced out over contraceptives for unmarried patients

Dr. Shelley Phillips, a family medicine physician, was practicing in San Antonio, Texas under University Health System, a not-for-profit university hospital group. She reported in May 2008 that the corporation running her practice was insisting she provide contraception in all cases. Dr. Phillips restricts contraception prescriptions to married patients. After several patients allegedly complained, her medical director informed Dr. Phillips that the hospital administration demanded all the physicians in the clinic prescribe contraception for any and all reasons. Dr. Phillips resigned.

Military physician forced to refer for abortions

Donald F. Thompson, MD, MPH&TM, reported, “I entered the practice of medicine from a deep commitment to serve my fellow man, and have been discouraged recently as I have been required to participate in activities that violate my personal convictions. As a physician with over a quarter century of service in the U.S. military, I take my vows very seriously. Twenty-six years ago I swore an oath to protect and defend the Constitution of the United States, not realizing then that my commitment would include extensive life-threatening service in Afghanistan and Iraq in recent months. I continue to fulfill this commitment gladly and without hesitation. Twenty-two years ago, I took the Hippocratic Oath when I graduated from medical school, but regrettably was required by military regulations to violate it within my first few years of practice by participating in referring women for abortions.”

Medical student castigated for pro-life views, shown aborted baby

Mark J. Heulitt, MD, said, “When I was a medical student, I refused to care for patients who were having an abortion and had to go through many hoops to have my rights to not be involved with this procedure be accepted. While I was a student on OB rotation, one of the nurses asked if she could speak to me in private and brought me to a utility room off the OR. In there she pulled towel off of a basin which contained an aborted fetus. She looked me straight in the eye and said, ‘What are you afraid of? This is just tissue,’” and told me to ‘grow up.’ I told her I would pray for her and left the room. I will never forget the anger in her eyes over my decision not to be involved with this procedure. The bias we face is many times subtle but poignant. We must practice our faith and stand up for our beliefs.”
Consequences Will Reform the Healthcare System

If proponents of stripping healthcare professionals of their rights of conscience are successful in their endeavor, the healthcare system will be forced to make a dramatic change. One popular argument is to say that if a medical professional will not grant a patient the service they request, then they should seek another occupation. Foundationally, medicine is not a business, but a profession.

However, if proponents have their way, it would be the other way around, forcing healthcare professionals to “compete” against each other for business, rather than offer a service. Traditionally healthcare professionals have “professed” to their patients, colleagues and communities that they have entered into a covenant stating how they will use the powerful knowledge they have been given. They take an oath to do no harm and to never destroy life. For the true “professional,” financial and business considerations are much lesser issues. They are in medicine because it is a calling to serve others sacrificially.

If healthcare rights of conscience are stripped from these professionals, there will be a reformation of the healthcare system. It will be a reversed system based on financial and business considerations over the desire to serve others. Healthcare professionals will have no right to follow their conscience. Instead, they will do exactly as the government instructs them to do, regardless of whether or not it is what is best for the patient.

A Future Without Personal Conscience

The irony will not be lost on those who espouse choice and are trying to take away one of the most precious of our individual civil liberties: the American people. We dare not mandate that medical and other professional schools systematically strip our future healthcare professionals from all religious and ethical convictions that have not been approved or dictated by the government. In fact, the true irony for those fighting to remove a doctor’s conscience is that one day a doctor’s conscience may be the last line of protection between a patient and those who would profit from the patient’s early death, especially when a fistful of lethal pills costs thousands of dollars less than traditional, life-honoring end-of-life care.
**Know Your Own Values**

What should you do if you are faced with defending your actions (or lack of participation) in a healthcare right of conscience situation? First and foremost, you need to know your own values. Learn as much as you can about the ethics behind today’s controversial medical treatments and procedures. Once you have done the research, you mentally need to “draw the line in the sand” on what medical procedures and treatments you feel comfortable with and consider “moral” or “immoral.” Some hospitals and organizations require their staff to perform certain procedures, and if a healthcare professional decides not to participate in those activities, they may be asked or forced to seek employment elsewhere.

Often when a medical professional lets their stance be known on a certain situation or procedure, they need to prepare to be belittled, ridiculed, threatened, discriminated and ostracized by some of their patients, colleagues and supervisors, and they could possibly even be terminated in their position. Always keep in mind that ultimately God is our judge, and we are accountable to Him.18

For the patient, it is equally as important for you to know your own personal values. If you do not agree with your healthcare professional on a medical procedure, understand that asking your doctor to perform the procedure is asking them to do something they believe to be morally wrong. Imagine the situation from their perspective—would you do something against your conscience? Remember that your healthcare professional has your best interest in mind, and it is not a battle of one person’s opinion versus another. If you still wish to proceed with a procedure, consider switching to another healthcare facility or professional that practices with views and beliefs similar to yours.

**Know the Law**

It is vital to educate yourself on right of conscience protection laws specific to your state because protection of conscience laws and conscience clauses often vary from state to state. While there are several federal protections (i.e. the Weldon Amendment, Church Amendment, Public Health Act), many situations may be settled on the state level. To learn more about existing federal protection of conscience laws, as well as current protection of conscience laws in your state you should do the research ([https://www.consciencelaws.org](https://www.consciencelaws.org), [http://cmda.org](http://cmda.org)) or speak to a local legal counsel.

HHS has a helpful webpage that lists information on various statutory provisions giving conscience protection to healthcare professionals at [https://www.hhs.gov/conscience/conscience-protections/index.html](https://www.hhs.gov/conscience/conscience-protections/index.html). You can also find information on how to file a conscience complaint.

**Latest Legal News**

On May 21, 2019, HHS published an updated conscience rule that was scheduled to go into effect on July 22, 2019. However, due to pending litigation, HHS agreed to delay the effective date until November 22, 2019. Planned Parenthood filed suit against the new HHS conscience rule, and along with CMDA member Dr. Regina Frost, CMDA sought and was granted intervenor status in the case siding with the new HHS rule. The plaintiffs (Planned Parenthood) argued that the rule was issued in violation of the Administrative Procedure Act. The initial District Court ruling in favor of the plaintiffs was issued on November 6, 2019.19 The District Court vacated the rule, reinstating the 2011 HHS Conscience rule put in place by the Obama Administration.20 CMDA and Dr. Frost have appealed the case to the Second Circuit Court and are being represented by Becket.21
5. Resources

Key Talking Points

The following are a few CMDA talking points on the issue of right of conscience. When speaking to your church, colleagues or the media, here are some strong points you could add to your conversation.

Key Message
There is a fundamental right to practice healthcare according to your deeply held religious, moral or ethical convictions.

Key Talking Points

1. You need to be able to trust your physician to abide by time-honored medical ethics and life-honoring principles that transcend changing laws.
   
   • “I will use treatment to help the sick, according to my ability and judgment, but I will never use it to injure or wrong them. I will not help a patient commit suicide, even though asked to do so, nor will I suggest such a plan. Similarly, I will not perform abortions. But in purity and in holiness, I will guard the sanctity of life and my role as healer.” – Hippocratic Oath

2. The right of conscience is protected by the First Amendment of the Bill of Rights: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....”
   
   • Original version proposed by James Madison before it was made more concise: “The Civil Rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, nor on any pretext be infringed.”

   • Thomas Jefferson: “The rights of conscience we never submitted, we could not submit. We are answerable for them to our God.”

3. The right of conscience needs more protection, not less. Present protection is limited to abortion, contraception, sterilization and executions.
   
   • Physician-assisted suicide, cloning, embryonic stem cell therapy, preimplantation genetic diagnosis, sex selection, transhumanism, genetic enhancement and other issues bring new challenges that require broader protection.
**Short Pithy Ways to Make your Point**

Here are some sound bites you may find helpful when speaking out to the media on this issue.

1. A patient’s right of convenience does not trump a doctor’s right of conscience.

2. Is our healthcare system in need of more conscience-driven healthcare professionals or more “ethically neutered” healthcare professionals?

3. Do we want medical schools to systematically strip our future healthcare professionals from any and all religious and ethical convictions that have not been approved by the government?

4. Your doctor’s conscience may someday be the last line of protection between you and those who would profit from your early death.

5. Some pharmacists don’t want to dispense the morning pill for the same reason they don’t want to drive drunk—they don’t want to kill another human being.

6. I’m not trying to mandate Planned Parenthood staff to work in a crisis pregnancy center in violation of their conscience.
References
18 The Holy Bible, King James Version. Job 21:22; Psalm 7:8