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Protecting the Careers of Medical Professionals Who Believe in the Hippocratic Oath

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We live in a culturally diverse society in which people vary greatly in their moral beliefs about the importance of human life. These profound differences are most bitterly expressed in the medical context, particularly with regard to issues such as abortion, physician-assisted suicide, embryonic stem cell research, and other life and death policies and procedures.

Some of these practices - specifically abortion and assisted suicide - contravene explicit provisions of the Hippocratic Oath (at least as it has been understood traditionally). Yet today, physicians, nurses, and other medical professionals whose moral beliefs prevent them from participating in these legal but ethically controversial acts, find themselves under increasing pressure to either violate their consciences or be driven out of their careers.

Until recently, dissenting medical professionals have been protected by so-called "conscience clauses" that permit them to opt out of performing abortions or participating in assisted suicide (where it is legal) without professional consequence. But in recent years, legislative proposals have been filed that would require all professionals participate in such life-terminating procedures if asked by a patient, or be complicit in them by referring the requesting patient to another doctor who will do the deed.

The controversy over conscience clauses came to an angry head recently when the Bush Administration promulgated a rule protecting professionals from being discriminated against in employment for refusing to perform medical procedures to which they morally object. The "Bush Conscience Clause" set off howling opposition among the medical intelligentsia, including the American Medical Association and the American College of Obstetricians and Gynecologists (ACOG). Connecticut, California, and five other states sued to have the regulation declared invalid. The new Obama Administration has already started regulatory action to revoke the policy.

Opposition to protecting the right of conscience has suddenly grown so intense that it



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is easy to foresee physicians, nurses, and pharmacists who hold to the orthodox understanding of the Hippocratic Oath being forced out of medicine altogether, a draconian approach explicitly proposed in a December 24, 2008 editorial in the *St. Louis Post Dispatch*, which opined:

"Doctors, nurses, and pharmacists choose professions that put patients' rights first. If they foresee that priority becoming problematic for them, they should choose another profession."



Imagine: being declared *persona non grata* in medicine merely for wishing to abide by an ethic that was considered mandatory for all doctors as recently as forty years ago.

It isn't just abortion or assisted suicide. In the next decade, we could see the legalization of currently criminal and unethical medical acts - such as harvesting organs from patients with catastrophic cognitive impairments (which has repeatedly been advocated in some of the most prestigious medical journals), eugenic infanticide (now practiced openly in the Netherlands), perhaps even cloned fetal farming for organs or experimental purposes (already permitted by law in New Jersey). Crafting effective conscience clauses to allow medical professionals to opt out of such programs is thus a matter of increasing urgency.

But this isn't as easy as it might seem. For example, overly broad wording could inadvertently protect doctors who refuse wanted life-sustaining treatment based on a moral belief that the patient's life is not worth living (futile care theory), perhaps even the abortion clinic nurse who refuses to save the life of a surviving baby based on her deeply held moral belief that an aborting mother has the right to a dead fetus.

To avoid this and other unintended consequences, I suggest that conscience clauses be drafted following these general principles:

- No medical professional should be forced to take, or be complicit in the taking of human life, whether of an embryo, fetus, or born member of the species.
- Conscience clauses should distinguish generally between elective procedures - *e.g.*, interventions not immediately necessary to save the patient's life or prevent serious physical harm - and non-elective procedures. Refusing elective procedures should be broadly protected, but not non-*Elective* procedures.
- To prevent conscience clauses from becoming safe harbors for discrimination, the requested *procedure* should generally be what violates the conscience of the health-care professional, *not bias against the patient*. In this way, for example, an oncologist would not be able to refuse to treat a lung-cancer patient because the patient smoked.
- Finally, those covered by conscience clauses should be bona fide health-care professionals such as nurses, pharmacists, and physicians. Custodians or bandage suppliers, as two examples, should not be covered.

Doctors, nurses, and other medical professionals who refuse to participate in life-terminating procedures send a clarion message to society that killing in the medical context is morally wrong. By protecting the conscience rights of these courageous professionals, we also protect the weak and vulnerable who are increasingly threatened by the growing influence of utilitarian bioethics. Or, to put it more bluntly:

The life you save by supporting conscience clauses could be your own.

CBC special consultant Wesley J. Smith, is also a Senior Fellow in Human Rights and Bioethics at the Discovery Institute and the associate director of the International Task Force on Euthanasia and Assisted Suicide.

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