



## Healthcare Right of Conscience

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The **Christian Medical & Dental Associations** serve as a voice and ministry for Christian doctors. Its mission is to change the heart of health care. Founded in 1931, the Christian Medical & Dental Associations promote positions and address policies on healthcare issues; conduct overseas and domestic mission projects; coordinate a network of Christian doctors for fellowship and professional growth; sponsor student ministries in medical and dental schools; and distribute educational and inspirational resources. CMDA also holds marriage and family conferences; provides missionary doctors with continuing education resources; and conducts academic exchange programs overseas.

# 1. What is Healthcare Right of Conscience?

## Common Terms When Discussing Healthcare Right of Conscience



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.<sup>1</sup>

Hippocratic Oath: written during the 4<sup>th</sup> 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. Parts of the oath are still used in most medical schools.<sup>2</sup>

Protection of Conscience Laws (PCL's): 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.<sup>3</sup>

Conscience Clauses: 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.<sup>4</sup>

### Definition

Healthcare Right of Conscience (ROC) 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 Christian Medical & Dental Associations' ethics statement on healthcare right of conscience says, "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."<sup>5</sup>

## 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.

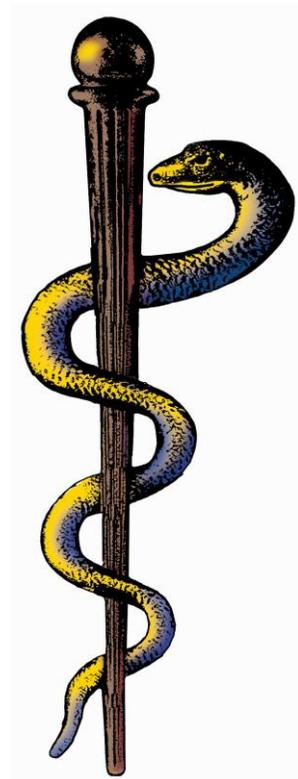
1. We must avoid every kind of evil (1 Thessalonians 5:22)
2. We must hate and oppose evil (Romans 12:9)
3. We should separate ourselves from evil (II Corinthians 6:17)
4. We should overcome evil with good (Romans 12:21)
5. We should seek wisdom (James 1:2-5)<sup>6</sup>

## 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 4<sup>th</sup> 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 wellbeing 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".<sup>7</sup>

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.<sup>8</sup>



## The First Amendment and ROC



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..."<sup>9</sup> 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.*" It is obvious that when a healthcare professional takes a professional license, it does not mean they have to give up his or her personal morality.

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 medical professionals, as well as for non-medical 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 – 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 providers or their patients. Each state in the United States has its own set of conscience laws. At the time of this publication, there are 45 states that have some sort of conscience laws on the issue of abortion alone.

While some states recognize the importance of protecting healthcare professionals' conscience rights, there are some that are 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 health care professional or institution to participate in or pay for abortions.<sup>10</sup> In that hearing, the courts ruled in favor of the healthcare professionals, but it won't be long before the court will see another challenge to this vital protection.

## 2. Healthcare Right of Conscience Challenged



The American Medical Association's (AMA) Statement on Healthcare Right of Conscience says this, "AMA reaffirms that neither physician, hospital, nor hospital personnel shall be required to perform any act violative of personally held moral principles. In these circumstances, good medical practice requires only that the physician or other professional withdraw from the case, so long as the withdrawal is consistent with good medical practice. Except in emergencies, physicians shall be free to choose whom to serve, with whom who to associate and the environment in which to provide medical care."<sup>11</sup>

The Christian Medical & Dental Associations' (CMDA) 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."<sup>12</sup>

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."<sup>13</sup>
- American Society of Health-System Pharmacists (ASHP): "...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"<sup>14</sup>



However, the healthcare professional's right of conscience is being challenged by many 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 came in. The last and best protection of all patients is a health professional with conscience.

### Some in Society Have a New Opinion

We are experiencing a time with a rampant overemphasis on and a distortion of the right autonomy. Autonomy protects a patient's right to make informed decisions for them self, 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 providers 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 Sears be forced to carry a product so you don't have to go down the road to Wal-Mart?

### Opposing Organizations' Positions



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

- "A threat to reproductive rights."
- "Health related decisions made between a provider and patient should be made on the personal welfare and healthcare needs of the patient - not the morals or belief of the caregivers."
- "While we firmly believe that all people have a right to their own opinions and moral beliefs, it is unethical for healthcare providers to stand in the way of a woman's access to safe, legal and professional healthcare."<sup>15</sup>

In November of 2007, the American College of Obstetricians and Gynecologists (ACOG) issued an ethical statement called, "Committee Opinion #385 – Limits of Conscience Refusal." In this statement, ACOG advocates the patient's autonomy trumping the moral objection of the healthcare provider.<sup>16</sup> The American Board of Obstetrics and Gynecology (ABOG) issued a new policy quickly following in January 2008 which stated that physician's certification would be contingent on compliance with ACOG ethical principles.<sup>17</sup> However, both organizations have faced opposition and have seen problems with their stance. ACOG's dilemma centers on consequences of allowing patient autonomy to become the prevailing right, which creates problems such patients demanding "elective" Cesarean sections.

### Most Threatened Health Issues

Although there are a number of medical procedures could be deemed controversial, there are three areas of healthcare that 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 and 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. With procedures such as in-vitro fertilization becoming more sought after to remedy infertility, there are a rising number of new concerns in this area. Should a doctor be forced to perform i.e., IVF for an unmarried couple if he or she believes children are more happy and healthy when they are raised by a

married couple? Should a doctor who believes in the sanctity of keeping sexual relations limited to a husband and wife be forced to prescribe sexual performance drugs to his or her 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 (PAS). Although at the time of this publication only one state in the United States has legalized PAS (Oregon), there are many other states where proponents of this procedure are pushing heavily for legalization. Life-honoring doctors and pharmacists will not want to be a part of this lethal procedure. PAS is in direct violation of the Hippocratic Oath, in which physicians vow to do no harm, nor to kill.

It is essential that doctors 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 lingering in the wing. Patients need to know their physician is able to practice with his or her 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 have been brought to court. We will briefly touch on a few of these cases that CMDA has been involved with, although there have been many similar cases in the past, and there will undoubtedly be more legal challenges in the future concerning conscience rights. (More cases are available on CMDA's website.<sup>18</sup>)



#### *Benitez v. North Coast Women's Care Center*

**Name of the court:** The Supreme Court of California

**Issue:** Defense of healthcare rights of conscience (specifically in California) in concerns to reproductive technology and rights.

**Amicus brief filed:** Americans United for Life (AUL) drafted and filed the brief on behalf of CMDA, which was filed in May 2005.

**Verdict:** On August, 18, 2008 the court ruled in favor of the plaintiff.<sup>19</sup>

#### *California ex rel. Bill Lockyer v. Gonzalez, et. Al.*

**Name of the court:** The United States District Court for the Northern District of California San Francisco Division

**Issue:** Defense of healthcare rights of conscience in concerns to abortion (upholding the Weldon Amendment).

**Amicus brief filed:** Attorneys with the Christian Legal Society's Center for Law and Religious Freedom drafted and filed the brief on behalf of CMDA, which was filed on January 25, 2007.

**Verdict:** The Weldon Amendment was upheld in March 2008.<sup>20</sup>

#### *Morr-Fitz v. Blagojevich*

**Name of the court:** The Supreme Court of Illinois

**Issue:** Defense of healthcare rights of conscience for pharmacists (specifically in Illinois).

**Amicus brief filed:** Americans United for Life (AUL) drafted and filed the brief on behalf of CMDA, which was filed on May 22, 2007.

**Verdict:** At the time of this publication, this case is pending before the Illinois Supreme Court.<sup>21</sup>

## Current Effects on Individuals

Many 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 medical professionals' right of conscience 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. (More testimonies and stories are available on CMDA's website.<sup>22</sup>)

- **Family medicine physician forced out over contraceptives for unmarried patients**  
Dr. Shelley Phillips, a family medicine physician practicing in San Antonio, Tex. under a not-for-profit university hospital group, University Health System reported in May 2008 that the corporation that runs her practice was insisting that 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 that 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: "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. Heullitt, MD: "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 providers to 'compete' against each other for business, rather than offer a service. Traditionally healthcare providers 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 doctors 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.



## 4. How to Deal with Difficult Situations

### Know Your Own Values



What should you do if you are faced with defending your actions (or lack of participation) in a healthcare ROC 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 physician or other 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 could possibly even be terminated in their position. Always keep in mind that ultimately God is our judge, and we are accountable to Him.<sup>23</sup>



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; 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 (PCL’s) 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 PCL’s, as well as current PCL’s in your state you should do the research (<[www.consciencelaws.org](http://www.consciencelaws.org)>, <[www.cmda.org](http://www.cmda.org)>) or speak to a local legal counsel.

Health and Human Services, concerned about the increasing discrimination against professionals on conscience grounds, put forward regulations to put teeth into the existing laws on this issue. These regulations would withhold federal healthcare funding from entities that discriminate. This is a big stick that could reverse the increasing hostility in the courts and workplace against one of the most basic constitutional rights. If these draft regulations are issued, there will finally be a mechanism to report discrimination.

## 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. (More talking points are available on CMDA’s website.<sup>24</sup>)

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

You need to be able to trust your physician to abide by time-honored medical ethics and life-honoring principles that transcend changing laws.

1. *“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



The right of conscience is protected by the First Amendment of the Bill of Rights.

1. *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...*
  - a. 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.”*
  - b. Thomas Jefferson – *“The rights of conscience we never submitted, we could not submit. We are answerable for them to our God.”*

### The right of conscience needs more protection, not less.

1. Present protection is limited to abortion, contraception, sterilization and executions.
  - a. 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 bytes that 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 doctors or more "ethically neutered" doctors?
3. Do we want medical schools to systematically strip our future doctors from any and all religious and ethical convictions that have not been approved by the government?
4. Your doctor's conscience may some day be the last line of protection between you and those who would profit from your early death.
5. Some pharmacist's 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.

### **Endnotes**

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- <sup>2</sup> The Oxford Pocket Dictionary of Current English (2008)
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- <sup>5</sup> CMDA Ethics Statement, "Healthcare Rights of Conscience." <http://www.cmda.org>.
- <sup>6</sup> CMDA Ethics Statement, "Moral Complicity with Evil." <http://www.cmda.org>.
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- <sup>10</sup> Weldon Amendment
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- <sup>19</sup> "Calif. Top Court: Docs Can't Withhold Care to Gays." Associated Press. August 18, 2008. <http://ap.google.com/article/ALeqM5gFyZO5FfQtyvQ6N-Ypy1xR6pTZwD92KSQC80>
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- <sup>23</sup> The Holy Bible, King James Version. Job 21:22; Psalm 7:8