Position Statement: Refusal to Treat on Grounds of Conscience or Religion

Primary Duty of Healthcare Practitioners

The primary conscientious duty of healthcare practitioners is at all times to treat, or provide benefit and prevent harm to, the patients for whose care they are responsible.[1] Any conscientious objection (CO) to treating a patient is secondary to this primary duty.

The Right to Conscience

The right to conscience is grounded in international human rights principles, linked to freedom of thought, conscience and religion.[2] Article 18 of the 1948 Universal Declaration of Human Rights states, "Everyone has the right to freedom of thought, conscience and religion…[and] to manifest his religion or belief in teaching, practice, worship and observance". The right, however, is a limited one.[3] Not acting in accordance with one's conscience is to betray oneself.[2] The definition of CO is the refusal to participate in an activity that an individual considers incompatible with their religious, moral or ethical beliefs.

The Right to Access Legitimate Healthcare

Women[a] have the right to human dignity and the capacity to make responsible choices. Prominent among women's human rights are rights to reproductive health and self-determination, of which safe and dignified access to abortion services is an important part.[4]

Specific rights that are particularly relevant to this topic are:

- The right to the highest attainable standard of health
- The right to the benefits of scientific progress
- The right to receive and impart information.

Actions that impede access to abortion arguably breach these rights. A nuanced balancing of these opposing rights is needed.[5]

In international human rights law, States have a duty to respect, protect and fulfil citizens' human rights. Under its duty to protect, the State should ensure that abortion providers do not infringe upon reproductive rights.[6]

In addition to the rights and responsibilities of individual providers, international courts and treaty monitoring bodies have consistently found that health systems have the responsibility to balance providers' rights to conscience with women's rights to have access to legal health services.[2] The Committee on the Elimination of Discrimination against Women (CEDAW) has stated that "it is discriminatory for a country to refuse to legally provide for the performance of certain reproductive health services for women" and that if healthcare providers refuse to provide such

[a]Within this Statement we use the term woman. However, it is important to acknowledge that it is not only people who identify as women for whom it is necessary to access women's health and reproductive services in order to maintain their health and wellbeing. Abortion services and delivery of care must therefore be appropriate, inclusive and sensitive to the needs of those individuals whose gender identity does not align with the sex they were assigned at birth.

services based on issues of conscience, “measures should be introduced to ensure that women are referred to alternative health providers”.[7]

Refusals of care on grounds of CO compromise access to abortion[8–10] and can be harmful to health and wellbeing.[11] The extensive psychosocial and physical harms associated with denied abortion are well documented for women with an unwanted pregnancy, the child born subsequently and for existing children within the family.[12]

Health System Obligations

States must adequately regulate the practice of CO to ensure the availability of legal abortion services and information.[13] National systems have devised different ways to ensure access while also protecting the rights of conscience of individual providers.[2] Efforts to ensure adequate numbers of providers include establishment of criteria for designation as one who objects to provision of abortion care and requiring those who object to register in national systems and/or provide advance notice to employers and patients. Objector status should be disclosed at an early stage to an employer/patients so that timely alternative plans can be made; in all regions of a country there must be adequate numbers of health professionals providing abortion care.[14] Many health systems and national legal frameworks allow for inclusion of willingness to provide abortion care in job descriptions and for refusal to hire those who will not provide this care if adequate numbers of providers are not already available. Employers may require employees to perform all tasks naturally falling within the scope of their employment.[15] A State must not allow a high proportion of objecting staff to develop, such that a burdensome workload falls on non-objecting staff.[16]

Regulations should not allow refusal to provide advice and referral. Most national regulations do not allow refusals of participation in ancillary parts of care such as registration of patients or post-procedure care, though notable exceptions can be found in both legislative and judicial actions.[2] If healthcare providers object to making indirect referrals, the safe transfer of a patient to the care of a colleague who does not have objections to abortion is in jeopardy.[17] Timeliness and procedural regularity are other considerations that ensure unobstructed access to abortion.[18] Health service managers need to ensure that personal moralities do not interfere with service delivery. Employment law tends to deal better with this matter than healthcare law.[19]

In the UK, refusals are not permissible in emergency situations [Abortion Act 1967, s4(2)]; also, they are only valid in relation to direct provision of care[20] and, in such instances, referral must be made to an alternative willing and capable provider.[21] Personal beliefs must not be pursued where they are in conflict with the principles of good medical practice, where they cause patients to be treated unfairly, or which deny them access to appropriate treatment or services or cause distress.[22]

Institutions

Conscience is generally considered by ethicists and legal scholars to be an issue relating to an individual, meaning that institutions such as hospitals or health systems cannot object to provision of procedures based on issues of conscience.[2,5] Indeed, this is enshrined in law in Spain, Colombia, South Africa and France. However, this limitation is not universally accepted. Some countries have laws defining the right to refuse to provide abortion services as an individual, not an institutional, right. Other countries, such as Argentina and some States in the USA, allow private institutions to opt out of providing these services, though in some cases advance registration of this refusal or policies to ensure referrals to other institutions are required.[2]

Abuses of Conscience and their Impact

The stigma surrounding abortion undoubtedly makes provision of abortion services less desirable for some healthcare workers, who in turn may invoke a right of conscience in refusing to provide such services, even if in fact the objection to participating in abortion services is not directly related to their conscience. Other documented abuses of invoking the right of conscience to refuse to provide abortion care include refusals by practitioners to provide abortion services in the public sector but who provide services for family members (Brazil), for high fees in the private sector (Poland and Croatia) and refusing to participate in emergency care or post-abortion care.[23] Other personal reasons invoked that are not true conscience-based are a discomfort with the abortion procedure, concern about one's professional reputation, being overworked/underpaid and discriminatory attitudes against women needing abortion services. These abuses of invoking CO to refuse care are often tolerated in society, probably due in part to the stigma surrounding abortion. Fewer clinicians will object on pure conscience grounds if contextual factors are addressed.[3]

Refusals to provide abortion care by physicians and other healthcare providers have led to documented provider shortages.[2] These shortages disproportionately affect women with the fewest resources including poor, young, rural and less-educated women. Provider shortages also impact on clinicians who are willing to provide abortion care, leading to increased stigma directed at these providers and provider burnout due to stigma and high workload.[24]

Professional Responsibilities

Professional organisations such as the International Federation of Gynecology and Obstetrics (FIGO) and the American Congress of Obstetricians and Gynecologists (ACOG) have developed ethical guidelines that delineate the professional responsibilities of healthcare practitioners who refuse to provide care based on religious or moral beliefs.[1,25] As a minimum, these professional bodies call for their members to provide care that is timely and evidence-based, including provision of accurate and unbiased information to their patients. Based on respect for patient autonomy, providers must ensure that the patient has access to a timely referral for the indicated service. Though not uniformly upheld in court cases on the matter, both FIGO and ACOG emphasise the need for their members to provide information in advance to their patients and employers regarding services that they will not provide, based on their moral or religious beliefs.[2] In addition, these organisations state that their members must provide indicated care in the case of an emergency when no other provider is available. In its safe abortion guidelines for health systems, the World Health Organization (WHO) emphasises the duty of healthcare practitioners who refuse to provide abortion services based on CO to refer women, to personally provide services in cases of life or health endangerment if there are no other available providers, and to treat women who arrive needing post-abortion care in a timely manner and with respect and dignity.[26]

BSACP Position

The human rights of service users and service providers must be balanced. The practice of conscientious refusal to treat on grounds of conscience or religion must be regulated to ensure good access to legal abortion services in all parts of the country. Individual professionals must be careful to follow good medical practice.

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