REPORT 1 OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS (I-14)
Physician Exercise of Conscience
(Reference Committee on Amendments to Constitution and Bylaws)

EXECUTIVE SUMMARY

As practicing clinicians, physicians are expected to uphold the ethical norms of their profession, including fidelity to patients and respect for patient self-determination. At the same time, as individuals, physicians are moral agents in their own right and, like their patients, are informed by and committed to diverse cultural, religious, and philosophical traditions and beliefs. In some circumstances, the expectation that physicians will put patients' needs and preferences first may be in tension with the need to sustain the sense of moral integrity and continuity that grounds a physician's personal and professional life.

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. This report examines the implications for patients, physicians, and the medical profession when tensions arise between a physician's professional commitments and his or her deeply held personal moral beliefs. It offers guidance on when a physician's professional commitments should outweigh personal beliefs as well as when physicians should have freedom to act according to the dictates of conscience while still protecting patients' interests.

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

CEJA Report 1-I-14

Subject: Physician Exercise of Conscience

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Referred to: Reference Committee on Amendments to Constitution and Bylaws (Mary E. LaPlante, MD, Chair)

The practice of medicine is inherently a moral activity, founded in a "covenant of trust" between patient and physician.[1,2,3] The respect and autonomy that medicine enjoys rest on the profession's commitment to fidelity and service in the patient-physician relationship, and on individual physicians' recognition that in becoming members of the profession they commit themselves to upholding its core ethical values and obligations.

Yet physicians are not defined solely by their profession. As individuals, physicians are moral agents in their own right and, like their patients, are informed by and committed to diverse cultural, religious, and philosophical traditions and beliefs, as well as the expectations of their profession. In some situations, the expectation that as healers, physicians will put patients' needs and preferences first may be in tension with the physician's own need to sustain the sense of moral integrity and continuity that grounds his or her personal and professional life. In such situations, physicians must decide whether and how personal conscience should guide their professional conduct.

Preserving opportunity for physicians to act in accordance with the dictates of conscience is important for preserving the integrity of the medical profession as well as the integrity of the individual physician. Ethically sound patient-physician relationships and the practice of medicine as a moral activity rest on trust in physicians' personal and professional integrity. Thus physicians should have considerable latitude to practice in accord with well-considered, deeply held beliefs that are central to their self-identities. Nonetheless, both as individual moral agents and as members of a profession dedicated to promoting the welfare of patients, physicians have a responsibility to be thoughtful and deliberative in making such decisions.

CONSCIENCE, INTEGRITY & DEEPLY HELD BELIEFS

When individuals speak of "acting in good conscience" or of acting in a way that preserves their "integrity," they are saying that they seek to align their decisions and actions with the deeply held beliefs that shape their self-identity as moral agents. To have integrity requires that "one's words and deeds generally be true to a substantive, coherent, and relatively stable set of values and principles to which one is genuinely and freely committed."[4] Those values and principles—which encompass not only religious beliefs, but also moral, social, and political values[5]—are central to an individual's understanding of who he or she is[6,7,8] as an individual and, for some, as a professional.

* Reports of the Council on Ethical and Judicial Affairs are assigned to the Reference Committee on Amendments to Constitution and Bylaws. They may be adopted, not adopted, or referred. A report may not be amended, except to clarify the meaning of the report and only with the concurrence of the Council.

Having integrity provides a sense of personal identity, along with satisfaction and self-respect in knowing that one lives in accord with one's beliefs.[4] Acting against one's conscience can create a sense of self-betrayal, loss of self-respect, and a feeling that one undermines one's integrity.[5,6,7,8] Having integrity "provides the basis for reliance, trust, friendship, and love."[4] When an individual's integrity is called into question, the trust others extend to him or her is undermined.

A claim to exercise conscience is underpinned by a claim that an act supports or violates one's deeply held beliefs. It does not rest on intuition or emotion, but requires that the individual carefully consider what is at stake for the patient, the profession, and the physician and be able to articulate how the "substantive, coherent, and reasonably stable" values and principles that constitute those beliefs justify acting one way or another. A claim to exercise conscience also requires willingness to accept the consequences of that action.[7,9]

PHYSICIANS' PROFESSIONAL RESPONSIBILITIES

As a profession, medicine is dedicated to "a certain degree of altruism, or suppression of self-interest when the welfare of those [it serves] requires it."[10] In becoming members of the profession of medicine, physicians commit themselves to upholding its ethical standards and expectations. Physicians' freedom to practice medicine within the bounds of their conscience must be considered in light of their professional responsibilities to their patients.

With certain exceptions, physicians are free to choose whether and with whom to establish a patient-physician relationship.[11,12] A physician must provide emergency care unless another qualified health professional is available, but a physician may decline to provide care for any individual patient so long as the decision is not based on characteristics that would constitute "invidious discrimination," such as race, religion, national origin, gender, sexual orientation, or disease status.[13,14,15,16,17]

Prior to forming a patient-physician relationship, physicians have considerable latitude to establish expectations in accord with their well-considered, deeply held beliefs. Certain specialties or geographic locations may incur increased responsibilities on the part of physicians to establish these expectations. However, once a physician has agreed to enter into a patient-physician relationship, his or her first responsibility is to the patient.[11,18] Physicians' fiduciary obligations to patients include putting patient interests and well-being ahead of the physician's personal considerations [11] and respecting the patient as an autonomous decision maker.[18,19,20] To be able to participate meaningfully in decisions about their health care, patients must be confident that their physician will present medical facts accurately and make recommendations in accordance with good medical practice,[21] and that the physician will not withhold information without the patient's agreement.[22]

Having once taken on the care of a patient, physicians have a further duty not to abandon the patient, encompassing obligations not to neglect the patient and to "support continuity of care."[14,23] While a physician may ethically withdraw from a case, he or she must notify the patient of the intent to withdraw sufficiently in advance to allow transfer of care to another physician.[23]

CONSCIENCE & PROFESSIONAL PRACTICE

In some circumstances, a physician may find that the dictates of his or her conscience do not align with the professional ethical expectation that a physician will provide care in keeping not only with

a patient's medical needs, but also with the patient's values, preferences, and goals for care. Resolving—or at least reducing—the moral tension this creates requires that the physician exercise discernment and thoughtful judgment.

Perhaps most commonly, this tension arises when a physician is asked to provide an intervention that the individual believes is inconsistent with or would outright violate his or her deeply held beliefs and, thus, compromise his or her integrity. Such situations would include, for example, those in which the physician objects to providing "a legally and professionally permitted service, such as abortion, sterilization, prescribing or dispensing emergency contraception, and organ retrieval pursuant to donation after cardiac death."[8] These situations should be distinguished from cases in which a physician refuses to provide care in keeping with his or her clinical judgment and consistent with recognized professional standards. Physicians are not expected to provide care that, in their professional judgment, is unlikely to achieve the patient's clinical goals. Indeed, they should not do so.[24]

Moral tension can also arise when conscience dictates that the physician provides an intervention or service that is medically permitted "when doing so is prohibited by law, institutional rules, employer policies, and so forth."[25] Examples include when a physician feels morally obligated to prescribe emergency contraception or to care for patients regardless of their immigration status, in violation of hospital policy, law, or professional ethics.[25] Importantly, health care professionals may hold very different core beliefs and thus reach very different decisions based on those core beliefs, yet equally act according to the dictates of conscience. For example, a physician who chooses to provide abortions on the basis of a deeply held belief in protecting women's autonomy makes the same kind of moral claim to conscience as does a physician who refuses to provide abortion on the basis of respect for the sanctity of life of the fetus.[26] It must be remembered that a physician may never impose medical care against the wishes of a patient who has decision-making capacity.[27,28]

In resolving situations of moral tension, a physician must balance preserving his or her integrity with the interests of the patient, future patients, and the medical profession. Yet, "being a conscientious medical professional may well mean at times acting in ways contrary to one's personal ideals in order to adhere to a general professional obligation to serve patients' interests first."[29] These obligations may arise more frequently when a physician works in an area in which access to care and referral options are limited. Or it may mean structuring one's practice to avoid, to the greatest extent possible, situations in which one would be asked or expected to provide care that creates significant challenges to one's moral integrity.

Patients, the public, and fellow professionals must be reasonably able to expect that physicians will uphold the fiduciary responsibilities of the profession and will, in general, provide legally available, medically permitted interventions or services in keeping with patients' medical needs and values, preferences, and goals for care. Physicians should use great restraint in deciding to act contrary to that general expectation.

RESOLVING OR REDUCING MORAL TENSION

As moral agents in their own right, physicians must have some scope to act so as to honor the beliefs that ground their sense of self and preserve integrity. As noted above, certain actions are beyond physicians' discretion: declining to provide care in emergency situations when no other qualified professional is available, discriminating against patients, imposing care against a competent patient's informed refusal. In other situations, when the foreseeable burdens for the patient are minimal, physicians have greater discretion to act in conscience. Between these

endpoints, for physicians facing situations of moral tension, determining how best to preserve their integrity in discharging their professional ethical obligations to patients calls for thoughtful deliberation that takes into account a variety of factors. These include considerations of medical need, whether there is an established patient-physician relationship, and the burdens a decision to act in conscience will pose for the patient, the physician, and others. A physician's decision to act in conscience has ramifications at all levels of patient care: providing interventions or services, informing the patient about treatment options, and referring the patient elsewhere for care.

Patient-Physician Relationships

Entering into a patient-physician relationship establishes the physician's fiduciary obligations to this particular individual.[30] Until such a relationship is established, physicians may decline to accept prospective patients (with the caveats noted above) and have considerable latitude in their exercise of conscience. Once a relationship is established, physicians must fulfill their responsibilities to promote patient welfare, respect patient autonomy, and adhere to standards of professionalism or formally terminate the relationship.[23]

In some instances, of course, patient and physician will share deeply held beliefs, and situations are unlikely to arise in which a physician would feel compelled to act in conscience contrary to the patient's values and preferences. But physicians cannot predict that they will share deeply held beliefs with all of their patients, or all of the time. A physician who knows that there are specific interventions or services he or she cannot "in good conscience" provide has a responsibility to make that clear to prospective patients before entering into a patient-physician relationship with them,[31,32] for example, by posting a notice in the waiting room. During this time, before the onset of the patient-physician relationship, the physician's discretion to exercise conscience is at its greatest. If the physician does not make this clear prior to establishing a relationship, his or her obligation to refrain from acting in conscience, or temper his or her action, is stronger than it would otherwise be. Yet disclosure alone is not always sufficient; how clearly the physician states his or her position, how well the patient understands the disclosure (and its implications for future care), and the nature of the patient's needs (e.g., emergency care), are also important factors to consider. Further, prospective efforts to inform patients are limited to the extent that physicians cannot always predict the types of care patients might request, or how advances in medical science or technology may alter the course of their practices over time.

Having discretion to follow conscience with respect to specific interventions or services does not relieve the physician of the obligation to not abandon a patient. This includes a responsibility to facilitate transfer of the patient to another physician willing to provide an intervention or service the treating physician finds morally objectionable.[20] It also includes responsibility to provide ongoing care for a patient, even if the need for that care stems from an objected-to intervention, until the patient can be transferred to another physician.[14,23,33]

Medical Need, Timeliness & Alternatives

Medical need constrains physicians' freedom to act according to conscience. All patients are vulnerable to some degree—they must rely on physicians' professional knowledge and skill and must trust that physicians will be dedicated to promoting their welfare.[30] The greater a patient's medical need, the more he or she must trust the physician and the greater the physician's fiduciary obligation to fulfill that trust. Thus physicians have least latitude to decline to provide care that is morally objectionable to them when that care is medically needed, unless the needed care is available to the patient elsewhere in a timely fashion.[23,33] The greater the medical need, the stronger the obligation to treat.[16] Conversely, physicians have greatest latitude to decline to

provide care when that care is elective, particularly when the desired care is available elsewhere and delay in obtaining it will not unduly compromise the patient's well-being. Physicians should not act so as to create a significant barrier to the patient receiving care that is medically needed.

In some cases, delay in receiving treatment may alter the patient's outcome—for example, timely access to emergency contraception. In exercising conscience, physicians must consider whether their actions by delaying care would effectively deny the patient access to desired care and what harms the patient would experience as a result including financial, medical, psychological, or other harms.

Physician exercise of conscience often has a scalar effect where a physician might justify certain acts because the alternative would be less acceptable. For example, a physician who would decline to provide abortion may feel comfortable providing contraception to prevent an unwanted pregnancy the patient might choose to abort, or may morally oppose gender reassignment operations but justify it in the case of an otherwise self-destructive patient.

Harms & Burdens to Patients

The likelihood of harm to the patient and the degree of harm also constrain physicians' freedom to act on grounds of conscience. The fiduciary nature of patient-physician relationships carries with it the obligation for physicians to minimize harms, and to a lesser extent burdens, to patients. Harms to patients can come in a variety of forms and may include physical harms, dignitary harms (as when the physician fails to respect the patient and disregards the patient's values and preferences), and psychosocial harms.[34-38] As with medical need, the greater the likelihood that acting in conscience will harm the patient, the less discretion the physician has, particularly when the harm in question is serious and imminent (e.g., significant pain, disability). Some harm to the patient may be so significant and foreseeable that a physician's exercise of conscience is not justifiable—for example, death or permanent injury in contrast to minor bleeding or discomfort.

Beyond harms as such, physicians should consider other burdens that acting according to the dictates of their conscience may impose on patients. Burdens can range from the inconvenience of having to go elsewhere for care that is readily available when a physician declines to provide an intervention, to more significant challenges when the patient's access to care is limited by constraints on services in the local health care system or such patient-specific factors as health literacy or access to transportation. Time, distance to care, cost, or other logistic burdens might be so severe as to outright bar the patient from obtaining necessary care. Again, the more significant the burden, the more physicians should temper their exercise of conscience in the interests of patient welfare. Likewise a minor inconvenience to a patient should not force a physician to act outside the dictates of conscience. Yet, physicians must be aware that what may initially seem to the physician to be a minor harm or burden could act as a significant barrier to care for the patient, depending on the patient's individual situation.

Harms and Burdens to Physicians & Others

For an individual physician, not being able to conduct his or her life in keeping with deeply held beliefs can lead to moral distress,[39] the sense that one has fundamentally compromised one's integrity,[4] and loss of self-respect.[4] The moral and psychological harm for the individual physician can be compounded if it adversely affects his or her ability to provide high quality care.[40,41] Unaddressed moral distress can lead to dissatisfaction among health care workers, [6,40] which raises concerns that disaffected providers will be unable to provide high quality care, possibly resulting in harm to their individual patients and to patients as a class.

Moreover, prohibiting physicians from exercising conscience may deter some individuals from becoming physicians or from becoming certain types of specialists, or it may lead physicians to become callous, disrespectful toward patients with diverging beliefs, or cavalier in upholding both their personal and their professional commitments, thus potentially compromising patient care and putting strain on the patient and public trust in personal and professional integrity of physicians.[40]

Patient care can also be affected at the institutional level. When a physician declines to provide an intervention or service on grounds of conscience, the burden falls to others to ensure that the exercise of conscience does not disrupt practice or compromise patient care, including care of the patient whom the dissenting physician has declined to treat, or the functioning of the institution.[6,41,42] Permitting individual physicians to exercise conscience without constraint can also damage professional relationships with colleagues who either do not share a physician's deeply held beliefs, or who find other ways to resolve moral tensions between their beliefs and the expectations of their profession. Finally, while patients and the public must trust the moral integrity of physicians, permitting physicians to exercise conscience freely may, paradoxically, put at risk the trust that physicians will uphold the commitments asked of them by their profession.

THE PROBLEM OF MORAL COMPLICITY

When a physician participates in an action that is in tension with his or her deeply held beliefs he or she may feel complicit, in some measure, in moral wrongdoing. Complicity involves "[sharing] in the guilt of an ethically improper act" by virtue of one's level of involvement with that act.[43] It is concerned with how participating in another party's immoral action (or inaction) violates one's own moral integrity.[32]

The degree to which an individual's action (or inaction) implicates him or her in a moral wrong depends on the individual's "moral distance" from the wrongdoer and/or the act, including the degree to which one shares the wrongful intent.[32,43] If one facilitates a moral wrong, but intended a morally licit purpose in doing so, then one is not morally complicit in the wrong. Moral distance also involves the extent to which one's action can be predicted to facilitate a moral wrong.[7,44] Loaning one's car to a friend who subsequently becomes drunk and kills someone while driving is morally more distant from the death than loaning one's car to a friend when one knows the friend plans to drink or has already been drinking.[32]

Other factors that influence moral complicity include the severity of the immoral act,[32] whether one was under duress in participating in the immoral act,[45] the likelihood that one's conduct will induce others to act immorally,[44] and the extent to which one's participation is needed to facilitate the wrongdoing.[32,45]

For physicians, the question of moral complicity arises when they facilitate in some manner the accomplishment of an end they believe to be morally wrong. For example, a physician who declines to provide an intervention or service, such as abortion, on grounds of conscience must still grapple with whether to inform a patient about the objected-to option and whether to refer the patient to another physician who will provide the intervention or service. (A physician who is unwilling to forgo life-sustaining treatment may similarly worry that he or she is complicit in wrongdoing with respect to informing the patient about the option to forgo care or transferring the patient to another physician willing to withhold or withdraw such care.) Physicians must grapple with the degree to which their actions will compromise their feelings of moral integrity—some physicians may be able to justify some provisions of care but not others based on their level of complicity, even if the care implicates similar moral questions (for example, sanctity of life). It

may be the case, as one example, that a physician can reconcile choosing not to participate in abortions with still providing emergency or other contraception. Yet in all circumstances, whatever the dictates of conscience, physicians must recognize and fulfill their other, continuing professional ethical obligations to the patient.

Duty to Inform

The duty to provide patients with the information they need to make well-considered decisions about their care is the embodiment of respect for patients' autonomy and is one of a physician's most fundamental professional obligations. As previously noted, physicians have a duty to present medical facts accurately,[17] including the risks, benefits, and costs of treatment alternatives,[13] and not to withhold information from patients.[33]

Providing information about treatment options the physician sincerely believes are morally objectionable or about how the patient might obtain objected-to treatment elsewhere is morally distant from what the physician's deeply held beliefs tell him or her is wrong. Providing information is sufficiently distant that the risk to physician integrity is outweighed by the professional obligation to inform, given the strong ethical import of informed consent.[5,29,32,46] Physicians can avoid any taint of complicity by notifying prospective patients prior to initiating a patient-physician relationship about interventions or services that conscience prohibits the physician from offering.[33]

Duty to Refer

The matter of referring a patient to a physician who will provide an objected-to intervention or service is more challenging. Physicians have a duty not to abandon their patients and to provide for continuity of care.[14,23] While these ground an obligation to refer when one cannot or will not provide needed care oneself, referring a patient for care that violates the physician's deeply held beliefs is clearly less morally distant from the objectionable act than is providing information.

As in making a determination whether to exercise conscience with respect to providing care, determining whether or how to refer requires that the physician consider medical need, risks and burdens to the patient of referring or not referring, and the likely impact of the physician's decision on colleagues and others. The greater the likelihood or severity of harm, the stronger the physician's duty to facilitate in some way the patient's access to needed care, even in the face of becoming in some measure complicit in what the physician believes is wrong. Conversely, when there is little risk of harm, the weaker the duty to facilitate access to the objected-to intervention or service. Physicians may have a heightened duty to refer in the context of an established patient-physician relationship.[47,48]

Physicians have a number of options for discharging the duty to refer, ranging from something as simple—and morally distant from wrongdoing—as providing a toll-free number or local hospital number for the patient to inquire about services, to formally referring the patient to a specific physician or institution.[32]

Physicians may also avoid (or at least minimize) moral complicity by terminating the patient-physician relationship and encouraging the patient to find another physician better able to meet the patient's needs.[46] However, terminating the relationship is ethically permissible only when timeliness of care is not a factor and the physician adheres to ethical guidelines for terminating the relationship, including providing needed care until the patient is transferred to another physician and ensuring that the patient's records are made available to his or her new physician.[23]

PROTECTING PATIENTS, PRESERVING INTEGRITY

The freedom to maintain moral views and act on them is central to a pluralist, democratic society.[6,7] Physicians, no less than patients, should be able to expect that they will be respected as moral agents. There is reason to think that preserving opportunity for physicians to act according to the dictates of conscience may "yield better overall medical quality by fostering a diverse workforce that possess integrity, sensitivity to patients' needs, and respect for diversity."[40] In determining whether and how to exercise conscience physicians have a responsibility—rooted in their own status as moral agents and their commitments as medical professionals—to deliberate thoughtfully about the implications for the well-being of patients and others and to seek ways to resolve or reduce moral tension that will neither unduly compromise the physician's moral integrity nor disproportionately burden the patient.

RECOMMENDATION

The Council on Ethical and Judicial Affairs recommends that the following be adopted and the remainder of this report be filed:

Physicians are expected to uphold the ethical norms of their profession, including fidelity to patients and respect for patient self-determination. Yet physicians are not defined solely by their profession. They are moral agents in their own right and, like their patients, are informed by and committed to diverse cultural, religious, and philosophical traditions and beliefs. For some physicians, their professional calling is imbued with their foundational beliefs as persons, and at times the expectation that physicians will put patients' needs and preferences first may be in tension with the need to sustain moral integrity and continuity across both personal and professional life.

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.

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.

In other circumstances, physicians may be able to act (or refrain from acting) in accordance with the dictates of their conscience without violating their professional obligations. Several factors impinge on the decision to act according to conscience. Physicians have stronger obligations to patients with whom they have a patient-physician relationship, especially one of long standing; when there is imminent risk of foreseeable harm to the patient or delay in access to treatment would significantly adversely affect the patient's physical or emotional well-being; and when the patient is not reasonably able to access needed treatment from another qualified physician.

In following conscience, physicians should:

(a) Thoughtfully consider whether and how significantly an action (or declining to act) will undermine the physician's personal integrity, create emotional or moral distress for the

physician, or compromise the physician's ability to provide care for the individual and other patients.

(b) Before entering into a patient-physician relationship, make clear any specific interventions or services the physician cannot in good conscience provide because they are contrary to the physician's deeply held personal beliefs, focusing on interventions or services a patient might otherwise reasonably expect the practice to offer.

(c) Take care that their actions do not discriminate against or unduly burden individual patients or populations of patients and do not adversely affect patient or public trust.

(d) Be mindful of the burden their actions may place on fellow professionals.

(e) Uphold standards of informed consent and inform the patient about all relevant options for treatment, including options to which the physician morally objects.

(f) In general, physicians should refer a patient to another physician or institution to provide treatment the physician declines to offer. When a deeply held, well-considered personal belief leads a physician also to decline to refer, the physician should offer impartial guidance to patients about how to inform themselves regarding access to desired services.

(g) Continue to provide other ongoing care for the patient or formally terminate the patient-physician relationship in keeping with ethical guidelines.

(New HOD/CEJA Policy)

Fiscal Note: Less than $500

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