ETHICAL AND LEGAL ISSUES IN HEALTHCARE

Conscientious Objection: the right to refuse to dispense

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Conscientious objection is a principled refusal to participate in certain social or political practices, most commonly applied to a refusal to serve in the armed forces on grounds of conscience. Conscience is the ability or sense that distinguishes whether our actions are right or wrong. It leads to feelings of remorse when we do things against our moral values and to feelings of integrity when our actions conform to our moral values.

Conscientious objection, as it applies to the world of healthcare, came to public prominence in 1994 when the state of Oregon legalised physician-assisted suicide. Oregon legislation allowed physicians to refuse to participate, on the grounds of conscientious objection, but obliged them to transfer the patient's file to an alternate practitioner if requested to do so, thereby facilitating access to legally available care. Physician-assisted suicide is not legal in Ireland. Indeed the Criminal Law (Suicide) Act 1993 identifies that anyone who aids or abets an attempt by another to commit suicide could be imprisoned for up to fourteen years. Recently efforts were made to have Reverend George Exoo of West Virginia extradited to Ireland to face charges for allegedly 'aiding and abetting' Mrs Rosemary O Toole in the act of suicide by overdose in 2002. This brings closer to home the debate about the use of medicines in the choice to deliberately end one's own life. Such medicines could be 'unwittingly' dispensed by community pharmacists.

Questions regarding the right to conscientious objection again occupy the minds of our US colleagues, not least due to current challenges to the pharmacist's right to refuse to dispense certain prescriptions.

In April 2007 the Washington Pharmacy State Board ruled that a pharmacist cannot stand in the way of a patient's right to have a prescription dispensed. Pharmacists and pharmacy owners sued Washington State to protect what they saw as their right to 'follow their conscience'. In November 2007 District Court Judge Leighton issued an order suspending the controversial state rules, writing that they appeared to unconstitutionally violate pharmacists' freedom of religion. Washington State is not alone in addressing this debate. At least eight states permit pharmacists to refuse to dispense emergency contraception. In California, pharmacists have a duty to dispense prescriptions and can refuse to dispense them only when their employer approves the refusal and the patient can still access the medication elsewhere in a timely manner. Illinois operates under an emergency rule passed in 2005 requiring a pharmacist to dispense contraception subsequent to a legitimate prescription. Indeed the legislative history of the current Illinois conscience clause suggests that pharmacists were originally included in the bill and later removed by amendment, clearly indicating that the legislature intended for the Act not to apply to pharmacists. Recent legislation thus demonstrates fundamental differences of opinion regarding the application of conscience clauses, where they exist, to pharmacy practice.

Refusals inevitably curtail a patient's right to have medication dispensed on foot of a valid prescription. While the current focus addresses emergency contraception, the principles of balancing patients' rights to access with a pharmacist's right to conscientious objection are applicable to many areas of pharmacy practice.

A licence to practice pharmacy confers a right to provide pharmacy services in accordance with the laws of the state. Society curtails an individual's access to medicines on the basis of a perceived balance between potential risks and likely benefits of their use. The pharmacist becomes the means through which an individual accesses those medicines and the nature of the controls applied puts pharmacists in an unequally powerful position in relation to the patient presenting a prescription. Hence it is reasonable that the state would impose corresponding duties on the pharmacist and such duties might be more stringent than would be expected of an ordinary citizen.

Pharmacists have a duty of care obligation to dispense prescription medications that satisfy the health needs of the populations they serve. The suggestion typically proposed is that this obligation can override claims of conscience or limit the extent to which pharmacists may refuse to assist patients who have lawful prescriptions.

However, the potential impact of forcing a practitioner to behave in a manner inconsistent with his/her conscience must also be considered. Successful healthcare interventions are generally based on a trusting relationship between the practitioner and the patient. The level of trust a patient places in the pharmacist will increase in proportion to his/her perception of the integrity of the pharmacist. Integrity demands a consistency between internal values and external behaviours (Latif, 2000). Hence to oblige any healthcare professional to act in contravention to his/her value system has the potential to cause an internal dilemma which undermines integrity.

In order to meet the needs of the national healthcare system and the patient, while respecting a pharmacist's conscientious objection, initiatives taken in other jurisdictions merit review, e.g. requiring the pharmacy to declare to the authorities and advise patients by means of an external notice that it will not dispense particular prescriptions, and obliging individual pharmacists to refer patients to an appropriate alternate source of care in a timely fashion.

Attempts to define 'appropriate alternative sources of care' inevitably lead to further debate but reference to other areas of healthcare delivery suggest that resolution of such matters in the Irish context would be possible, e.g. the availability of Caredoc services and the classification of a primary care team area at 10,000 people are both based on geographical distances generally consistent with the provision of multiple sources of pharmacy services.

Obligations to employers and employees tend to be more directly enshrined in legislation. Employers have a right to expect that a healthcare professional will provide the service for which he/she is employed, and in this context a pharmacist who knows that he/she has a conscientious objection, e.g. to dispensing the morning after pill, has a responsibility to disclose this at the time of employment. This facilitates the introduction of alternate arrangements for the provision of that service. Likewise, employees have a right to not be dismissed unfairly and differences in perception are likely to occur. Employers of healthcare professionals, where they are not also members of the profession, face additional challenges with respect to the interpretation of the nature of professional judgement.

Employees in Ireland are protected under the Unfair Dismissals Act (1977–2001), which determines that dismissals, if shown to result wholly or mainly from religious or political opinions, will be deemed to be unfair. While affiliation with a religious organisation might be relevant to many instances of conscientious objection, it is important that we extend our thinking beyond such confines. Many practitioners' professional judgement is based on the development of moral reasoning skills independent of either religious or political affiliation.

Duty of care obligations to patients are paramount. An important distinction must be made between objection and obstruction. Professional responsibility demands that a pharmacist with relevant conscientious objections avoids surprising patients and ameliorates the consequences to the patient by facilitating care. Pharmacists are obviously not entitled to use their professional position as a vehicle for cultural or moral intimidation.

Denial of care puts the burden of increased accountability on the pharmacist. The pharmacist who conscientiously refuses should be able to account for his/her understanding of the facts, science and ethical reasoning to demonstrate the basis for such course of action. Essential to the

solution is assurance that the objection is based on a clear understanding of the therapy at issue. The advancement of processes by which such assurances can be given to all parties is core to handling this issue in the professional manner it deserves.

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