

Bernard Dickens on Religious Refusals to Provide Medical Care

Bernard Dickens (University of Toronto Faculty of Law) has posted [Legal Protection and Limits of Conscientious Objection: When Conscientious Objection is Unethical](#) on SSRN. Here is the abstract:



The right to conscientious objection is founded on human rights to act according to individuals' religious and other conscience. Domestic and international human rights laws recognize such entitlements. Healthcare providers cannot be discriminated against, for instance in employment, on the basis of their beliefs. They are required, however, to be equally respectful of rights to conscience of patients and potential patients. They cannot invoke their human rights to violate the human rights of others.

There are legal limits to conscientious objection. Laws in some jurisdictions unethically abuse religious conscience by granting excessive rights to refuse care. In general, healthcare providers owe duties of care to patients that may conflict with their refusal of care on grounds of conscience. The reconciliation of patients' rights to care and providers' rights of conscientious objection is in the duty of objectors in good faith to refer their patients to reasonably accessible providers who are known not to object.

Conscientious objection is unethical when healthcare practitioners treat patients only as a means to their own spiritual ends. Practitioners who would place their own spiritual or other interests above their patients' healthcare interests have a conflict of interest, which is unethical if not appropriately declared.

Professor Dickens has also published an op-ed, [Unethical Protection of Conscience: Defending the Powerful against the Weak](#), in the American Medical Association's journal, *Virtual Mentor*:

In "The Personal is Political, the Professional is Not: Conscientious Objection to Obtaining/Providing/Acting on Genetic Information," Joel Frader and Charles L. Bosk make a compelling argument that the invocation of personal conscience violates medical professional ethics. They believe that provisions like those in new federal legislation and regulations that prohibit discrimination against health care professionals who refuse to provide services or referrals on religious or moral grounds violate medical ethics.

The rules on protection of conscience issued by the federal Department of Health and Human Services (DHHS) were given legal effect January 20, 2009, as a final gesture of the Bush administration, and are now under review by the Obama administration. They were proposed under three laws: the Weldon Amendment, named after former Representative Dave Weldon (R-FL), which amends the HHS Appropriations Act; section 245 of the Public Health Service Act, signed by President Clinton in 1996; and the Church Amendments, named after former Senator Frank Church (D-ID), and enacted following the Supreme Court's 1973 decision in *Roe v. Wade* to ensure that physicians and hospitals were not required to perform abortions or sterilizations as a condition of receipt of federal funds. At least seven states and two abortion-rights groups are in federal court claiming that the Bush administration provisions are unconstitutional on the grounds that they interfere with state laws guaranteeing access to abortion-related and comparable health care services.

The protection that the federal provisions offer is glaringly at odds with the self-sacrifice that has characterized the four historically reputable professions, namely medicine, religious ministry, the profession of arms, and the law. . . .

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