JNP

Conscience Clauses and Refusal to Treat: Implications for Nurse Practitioners

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ABSTRACT

Ethics and law in the United States prioritize respect for patient autonomy. Patients have a right to make decisions regarding their own health and their own bodies, and providers have a concurrent duty to provide reasonable information to assure that patient decisions are "informed" decisions. When these disagreements involve moral values, nurses and nurse practitioners may experience a "conflict of conscience," a situation where they are asked to do something that is contrary to their religious beliefs, moral convictions, or conscience. Preparing to respond to these situations in a responsible and ethical manner is a duty of all professional providers.

Keywords: conflict of conscience, conscience clauses, duty to treat, refusal to treat

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INTRODUCTION

Ethics and law in the United States prioritize respect for patient autonomy. Patients have a right to make decisions regarding their own health and their own bodies, and providers have a concurrent duty to provide reasonable information to assure that patient decisions are "informed" decisions.[1] This has been codified, particularly in the Patient Self Determination Act of 1991.[2] This sounds straightforward, yet related conflicts frequently arise in health care settings, either between a patient and providers, or among providers. When these disagreements involve moral values, nurses and nurse practitioners (NPs) may face workplace events where they experience "moral distress" from an unresolved ethical dilemma, or a "conflict of conscience," a situation in which they are asked to do something that is contrary to their religious beliefs, moral convictions, or conscience. Preparing to respond to these situations in a responsible and ethical manner is a duty of all professional providers.

The case of *Shelton v University of Medicine & Dentistry of New Jersey*[3] provides an example of such a situation and serves as an introduction to federal and state protections that are available to NPs and other providers faced with a conflict of conscience.

SHELTON V UNIVERSITY OF MEDICINE & DENTISTRY OF NEW JERSEY AND SUBSEQUENT LITIGATION

Yvonne Shelton was a staff nurse in the labor and delivery unit of a large academic hospital. The unit provides routine vaginal and cesarean deliveries and does not perform elective abortions. However, on occasion, nurses are required to assist with emergency procedures that result in termination of a pregnancy.

Patient A was admitted to Shelton's unit with premature rupture of membranes and induction of her labor was scheduled. Shelton refused to care for the patient on the grounds that participating in the induction would end a life. After this occurrence, Shelton's supervisor asked that she provide a note from her pastor clarifying her religious beliefs. Instead, Shelton authored a note stating, "Before the foundations of the earth, God called me to be Holy. For this cause I must be obedient to the word of God. From his own mouth he said 'Thou shalt not kill.' Therefore, regardless of the situation, I will not participate directly or indirectly in ending a life…"[3]

Subsequently, Patient B was admitted, bleeding profusely, and diagnosed with placenta previa. Her provider ordered an emergency cesarean delivery. It was unlikely that the fetus would survive the early birth, so Shelton refused to scrub in for the cesarean delivery. The hospital had to secure another nurse to

take her place, resulting in a 30-minute delay of this emergency procedure and therefore compromising the care and safety of Patient B.

The hospital informed Shelton that she could no longer work in the labor and delivery unit because of her refusal to assist with "medical procedures necessary to save the life of the mother and/or child." The hospital further noted that staffing reductions prevented her to trade assignments and that her refusals to assist posed a threat to patients' safety. In lieu of termination, the hospital offered Shelton a lateral transfer to the neonatal intensive care unit (NICU). They also encouraged her to meet with their human resources department to identify other available nursing openings.

The hospital gave Shelton 30 days to either accept the NICU position or apply for another position. She declined both offers and she was terminated at the expiration of the 30 days. She sued the hospital in federal court, claiming the institution violated Title VII of the Civil Rights Act of 1964 (Civil Rights Act),[4] the New Jersey Law Against Discrimination,[5] and the First Amendment (Amendment I) to the US Constitution,[6] which prohibits enactment of laws respecting the establishment of religion as well as those that impede the free exercise of religion.

The US District Court for the District of New Jersey articulated the standards an employee must demonstrate to prevail in a case alleging violation of the Civil Rights Act: (1) the employee must hold a sincere religious belief that conflicts with a job requirement; (2) the employee must inform the employer of the conflict; and (3) the employee must demonstrate he/she was disciplined for failing to comply with the conflicting requirement. Once this prima facie case has been established by the nurse, the burden then shifts to the employer to establish there was an attempt at a reasonable accommodation or undue hardship would result by granting the accommodation.

In the present case, the court found that the hospital's offer to transfer Shelton to the NICU was a reasonable accommodation, as was their offer to have her meet with human resources to place her in a substantially similar position. In addition, the court found Shelton had not initially pled the hospital had violated the NJ Conscience Statute, so this matter was not before the court. Finally, as to her constitutional claim, the court found that the hospital treated her in the same manner as any staff nurse who refused to participate in procedures and that they had not violated her First Amendment right to free exercise of religion.

After Shelton's federal case, 12 nurses filed suit against the University of Medicine & Dentistry of New Jersey under both federal and New Jersey state law when the hospital scheduled training for their same-day surgery unit that would include surgical abortions.[7] The court order granted by a federal judge restrained the hospital, "from requiring the named Plaintiffs (nurses) from undergoing any training, procedures, or performances relating to abortions pending the Court's merits regarding the Plaintiffs' Application for a Preliminary Injunction." Prior to a trial on the merits, the University of Medicine & Dentistry of New Jersey agreed not to make abortion training mandatory.[7]

As demonstrated in these cases, existing federal and state laws allow NPs and other health care team members conscience protections. Professional rules and ethical codes also guide NP practice in this regard. A brief review of these roadmaps may prove useful for NPs who are faced with moral distress or a conscientious objection.

HISTORICAL OVERVIEW

US conscience clause legislation is thought to have its roots in the US Civil War, when the government allowed conscientious objectors exemption from participating in war based on religious grounds.[8] Over time, and particularly during the past 40 years after the Supreme Court's ruling in *Roe v Wade*,[9] there has been tremendous growth in conscience clause legislation, laws that attempt to balance a provider's religious or moral beliefs with the rights of patients. The Table offers a summary of selected existing provisions under selected federal laws.[10,11] Importantly, most states afford conscience protections as well.[11]

Although conscience clause laws were originally initiated to address religious or moral objection to abortion, the scope of such laws has expanded. Incidents of refusal to provide care for what providers identify as moral reasons have varied from denying care to smokers or the obese, to recent concerns

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