Woman - Psychosomatic Gynaecology and Obstetrics (2014) xxx, xxx–xxx

Available online at www.sciencedirect.com

ScienceDirect

journal homepage: www.elsevier.com/locate/woman

''Dishonourable disobedience'' — Why refusal to treat in reproductive healthcare is not conscientious objection

Christian Fiala[a,*], Joyce H. Arthur[b]

[a] Gynmed Ambulatorium, Mariahilferguertel 37, 1150 Vienna, Austria
[b] Abortion Rights Coalition of Canada, POB 2663, Station Main, Vancouver, Canada V6B 3W3

Received 30 January 2014; accepted 16 March 2014

KEYWORDS
Abortion;
Contraception;
Conscientious objection;
Dishonourable disobedience;
Reproductive health;
Refusal to treat

Summary In medicine, the vast majority of conscientious objection (CO) is exercised within the reproductive healthcare field — particularly for abortion and contraception. Current laws and practices in various countries around CO in reproductive healthcare show that it is unworkable and frequently abused, with harmful impacts on women's healthcare and rights. CO in medicine is supposedly analogous to CO in the military, but in fact the two have little in common.

This paper argues that CO in reproductive health is not actually *Conscientious Objection*, but *Dishonourable Disobedience* (DD) to laws and ethical codes. Healthcare professionals who exercise CO are using their position of trust and authority to impose their personal beliefs on patients, who are completely dependent on them for essential healthcare. Health systems and institutions that prohibit staff from providing abortion or contraception services are being discriminatory by systematically denying healthcare services to a vulnerable population and disregarding conscience rights for abortion providers.

CO in reproductive healthcare should be dealt with like any other failure to perform one's professional duty, through enforcement and disciplinary measures. Counteracting institutional CO may require governmental or even international intervention.

1. Origin and meaning of ''conscientious objection''

Conscientious objection (CO) in the West originates in Christianity in the form of pacifism — the belief that taking human life under any circumstances is evil (Moskos and Whiteclay Chambers, 1993). Although all conscientious objectors take

* Corresponding author.
E-mail addresses: christian.fiala@aon.at (C. Fiala), joyce@arcc-cdac.ca (J.H. Arthur).

http://dx.doi.org/10.1016/j.woman.2014.03.001
2213-560X/

Please cite this article in press as: Fiala C, Arthur JH. ''Dishonourable disobedience'' — Why refusal to treat in reproductive healthcare is not conscientious objection. Woman - Psychosom Gynaecol Obstet (2014), http://dx.doi.org/10.1016/j.woman.2014.03.001

their position on the basis of conscience, they may have varying religious, philosophical, or political reasons for their beliefs.

The original expression of conscientious objection was the refusal to perform mandatory military service because of personal or religious moral objections to killing. However, in recent years, the concept has been used by some in the medical profession to refuse to provide services with which they personally disagree, such as euthanasia, abortion, contraception, sterilization, assisted reproduction, and other health services — even when these services are legal and within the scope of their qualifications and practice. In particular, the Catholic Church and the anti-choice movement have co-opted the term ''conscientious objection'' to include the refusal by medical personnel to provide or refer for abortion (and increasingly, contraception), on the grounds that abortion is murder and that actions to oppose it are imperative. As the late Pope John Paul II said (Pope John Paul II, 1995):

> *Abortion and euthanasia are thus crimes which no human law can claim to legitimize. There is no obligation in conscience to obey such laws; instead there is a grave and clear obligation to oppose them by conscientious objection.*

Reproductive health is the only field in medicine where societies worldwide accept freedom of conscience as an argument to limit a patient's right to a legal medical treatment. However, CO in medicine is still largely unregulated across Europe (as in the rest of the world) and abuses remain systemic (Center for Reproductive Rights, 2010).

2. Current CO policies and laws

Most western countries allow healthcare professionals some degree of CO through medical policies or codes of ethics — often called ''refusal clauses'' or ''conscience clauses''. Typically, healthcare personnel can opt out of providing non-emergency care, but only if they promptly refer the patient to someone else who can help them. The Code of Ethics of FIGO (International Federation of Gynecology and Obstetrics) states (FIGO):

> *Assure that a physician's right to preserve his/her own moral or religious values does not result in the imposition of those personal values on women. Under such circumstances, they should be referred to another suitable health care provider. Conscientious objection to procedures does not absolve physicians from taking immediate steps in an emergency to ensure that the necessary treatment is given without delay.*

Many countries have enshrined CO into law (Heino et al., 2013):

- Austrian law states: *No one may be in any way disadvantaged ... because he or she has refused to perform or take part in such an abortion.* (Government of Austria, 1975)
- France's law says: *A doctor is never required to perform an abortion but must inform, without delay, his/her refusal and provide immediately the name of practitioners who may perform this procedure... No midwife, no nurse, no paramedic, whatever is required to contribute to an abortion. ... A private health establishment may refuse to have abortions performed on its premises.* (Government of France, 2001)
- Even though the Australian state of Victoria decriminalized abortion in 2008, the new law retains a CO clause: *If a woman requests a registered health practitioner to advise on a proposed abortion, or to perform, direct, authorise or supervise an abortion for that woman, and the practitioner has a conscientious objection to abortion, the practitioner must refer the woman to another registered health practitioner [who] does not have a conscientious objection to abortion.* (Australasian Legal Information Institute, 2010)
- In the United States, almost every state has passed refusal clauses allowing physicians to opt out of providing abortions and other services. In addition, federal law protects doctors and nurses who do not want to perform abortions or sterilizations, and allows health workers to file complaints if they feel discriminated against (Huffington Post, 2011).

3. Abuse of CO

Once the basic principle of CO is accepted in reproductive healthcare, it becomes impossible to control or limit. Who will be in charge of deciding? Where does it stop? What criteria will determine the limits? Who will enforce it? And what are the sanctions? Currently, legal provisions for CO are routinely abused by anti-choice healthcare personnel (Cook and Dickens, 2006; Dickens, 2006), who are usually not disciplined for it.

Most CO laws and policies require doctors to refer appropriately to another doctor who will provide the service — what we call ''limited CO'' — but this often does not happen because many anti-choice healthcare workers believe that even giving information or a referral violates their conscience. Such workers will sometimes break the law or even commit malpractice — they may refuse outright to refer, make an inappropriate referral to an anti-choice ''counselling'' agency, treat the patient disrespectfully, fail to disclose the services they will not provide or why, refuse to give any information on options, provide misinformation on options, or delay a referral until it is too late for an abortion (CARAL, 2003). For example:

- In Wisconsin, ''...a married woman with 4 children sought the morning-after pill at a local pharmacy. Not only did the pharmacist refuse to fill the prescription, he refused to transfer it to another pharmacist or to return the original prescription to the patient.'' (Grady, 2006a)
- In Poland, women who qualify for a legal abortion are entitled to a certificate that they must present to get an abortion, but doctors will often refuse to provide one when they should, or improperly declare a certificate ''invalid'' when one is presented to them (Reuters, 2007).
- In a Canadian survey (CARAL, 2003): ''Anti-choice doctors were noted for lying about abortion services, claiming that there was not enough time to do the abortion, or that a hospital might not provide services after eight weeks''.

Please cite this article in press as: Fiala C, Arthur JH. ''Dishonourable disobedience'' — Why refusal to treat in reproductive healthcare is not conscientious objection. Woman - Psychosom Gynaecol Obstet (2014), http://dx.doi.org/10.1016/j.woman.2014.03.001