Protection of Conscience Project
www.consciencelaws.org

ADVISORY BOARD
Dr. Shahid Athar, MD
Clinical Associate Professor of Medicine & Endocrinology, Indiana School of Medicine, Indianapolis, Indiana, USA

J. Budziszewski, PhD
Professor, Departments of Government & Philosophy, University of Texas, (Austin) USA

Abdulaziz Sachedina,PhD
Dept. of Religious Studies, University of Virginia, Charlottesville, Virginia, USA

Roger Trigg, MA, DPhil
Academic Director, Centre for the Study of Religion in Public Life, Kellogg College, University of Oxford, United Kingdom

Lynn D. Wardle, JD
Professor of Law, J. Reuben Clark Law School, Brigham Young University, Salt Lake City, Utah, USA

PROJECT TEAM
Human Rights Specialist
Rocco Mimmo, LLB, LLM
Ambrose Centre for Religious Liberty, Sydney, Australia

Administrator
Sean Murphy

Revision Date: 2015-01-12

Access - or ethical cleansing?

Sean Murphy, Administrator
Protection of Conscience Project

Despite a warning from the Ontario Medical Association that the quality of health care will suffer if people who refuse compromise their moral or ethical beliefs are driven from medical practice,[1] the College of Physicians and Surgeons of Ontario plans to introduce a policy this year that will have that effect.[2] The College is concerned that too many Ontario doctors are refusing to do what they believe to be wrong.

Ontario physicians may have more to say about this, since no other profession imposes an obligation to do what one believes to be wrong as a condition of membership. Indeed, it is extremely improbable that such a requirement can be found in the constitution of any occupational or community organization in this country - or any country.

On a more practical note, if the Supreme Court of Canada decides to legalize euthanasia and physician assisted suicide, the policies on human rights and end of life care that the College plans to enact this year will require physicians to kill patients or help them commit suicide, or direct them to someone who will: in the words of the draft policy, to make "an effective referral . . . to a non-objecting, available, and accessible physician or other health-care provider."[3]

An undetermined number of physicians who don't want to kill patients or assist with suicide themselves may, in fact, be willing to do this. But many physicians will not be willing to provide "an effective referral" because, in their view, to do that is morally equivalent to doing the killing themselves. In the words of the President of Quebec's Collège des médecins, "[I]f you have a conscientious objection and it is you who must undertake to find someone who will do it, at this time, your conscientious objection is [nullified]. It is as if you did it anyway."[4]

Physicians who think like this are the targets of the policy developed by Dr. Marc Gabel and his working group at the Ontario College of Physicians. Physicians who think like this, according to Dr. Gabel, should not be in family practice. He was not, of course, talking about euthanasia or assisted suicide. He was talking about abortion.

But the issue is exactly the same. Any number of physicians may agree to referral for abortion because they believe that referral relieves them of a moral burden or of a task they find disturbing or distasteful. However, for others, as Holly Fernandez-Lynch has observed, referral imposes "the serious moral burdens of complicity."[5] They refuse to refer for abortion because they do not wish to be morally complicit in killing a child, even if (to use the terminology of the criminal law) it is, legally speaking, "a child that has not become a

human being."[6]

Just as some physicians believe it is wrong to facilitate killing before birth by referring patients for abortion, they and other physicians believe it is wrong to facilitate killing after birth by referring patients for euthanasia or assisted suicide. Activists like Professors Jocelyn Downie and Daniel Weinstock disagree.

Both are members of the "Conscience Research Group."[7] The Group intends to entrench in medical practice a duty to refer for or otherwise facilitate contraception, abortion and other "reproductive health" services. Both were members of an "expert panel" that recommended that health care professionals who object to killing patients should be compelled to refer patients to someone who would,[8] because (they claimed) it is agreed that they can be compelled to refer for "reproductive health services."[9]

From the perspective of many objecting physicians, this amounts to imposing a duty to do what they believe to be wrong. But that is just what the Conscience Research Group asserts: that the state or a profession can impose upon physicians a duty to do what they believe to be wrong - even if it is killing someone - even if they believe it to be murder. And Dr. Gabel and his working group agree.

To make that claim is extraordinary, and extraordinarily dangerous. For if the state or a profession can require me to kill someone else - even if I am convinced that doing so is murder - what can it not require?

If the College's real goal is to ensure access to services - not to punish objecting physicians - that goal is best served by connecting patients with physicians willing to help them. If the real goal is to ensure access - not ethical cleansing - there is no reason to demand that physicians do what they believe to be wrong.

Notes

1. Letter to the College of Physicians and Surgeons of Ontario from the Ontario Medical Association Section on General and Family Practice Re: Human Rights Code Policy, 6 August, 2014. (http://policyconsult.cpso.on.ca/wp-content/uploads/2014/08/OMA-SGFP-section-redacted.pdf) Accessed 2018-03-07.

2. College of Physicians and Surgeons of Ontario, "Professional Obligations and Human Rights (Draft)" (http://policyconsult.cpso.on.ca/wp-content/uploads/2014/12/Draft-Professional-Obligations-and-Human-Rights.pdf) Accessed 2018-03-07.

3. College of Physicians and Surgeons of Ontario, "Professional Obligations and Human Rights (Draft)," lines 156-160. (http://policyconsult.cpso.on.ca/wp-content/uploads/2014/12/Draft-Professional-Obligations-and-Human-Rights.pdf) Accessed 2018-03-07.

7120 Tofino St., Powell River, British Columbia, Canada V8A 1G3
Tel: 604-485-9765 E-mail: protection@consciencelaws.org

4. "Parce que, si on a une objection de conscience puis c'est nous qui doive faire la démarche pour trouver la personne qui va le faire, à ce moment-là , notre objection de conscience ne s'applique plus. C'est comme si on le faisait quand meme." Consultations & hearings on Quebec Bill 52. Tuesday 17 September 2013 - Vol. 43 no. 34. Collège des médecins du Québec: Dr. Charles Bernard, Dr. Yves Robert, Dr. Michelle Marchand, T#154 (http://consciencelaws.org/background/procedures/assist009-001.aspx#154)

5. Fernandez-Lynch, Holly, *Conflicts of Conscience in Health Care: An Institutional Compromise*. Cambridge, Mass.: The MIT Press, 2008, p. 229.

6. *Criminal Code*, Section 238(1). (http://laws-lois.justice.gc.ca/eng/acts/C-46/page-53.html#docCont) Accessed 2018-03-07.

7. Let their conscience be their guide? Conscientious refusals in reproductive health care. (http://conscience.carolynmcleod.com/meet-the-team/) Accessed 2018-03-07

8. Schuklenk U, van Delden J.J.M, Downie J, McLean S, Upshur R, Weinstock D. *Report of the Royal Society of Canada Expert Panel on End-of-Life Decision Making* (November, 2011) p. 101 (http://rsc-src.ca/sites/default/files/pdf/RSCEndofLifeReport2011_EN_Formatted_FINAL.pdf) Accessed 2018-03-07.

9. Schuklenk U, van Delden J.J.M, Downie J, McLean S, Upshur R, Weinstock D. *Report of the Royal Society of Canada Expert Panel on End-of-Life Decision Making* (November, 2011) p. 62 (http://rsc-src.ca/sites/default/files/pdf/RSCEndofLifeReport2011_EN_Formatted_FINAL.pdf) Accessed 2018-03-07.