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Entrenching a 'duty to do wrong' in medicine

Canadian government funds project to suppress freedom of conscience and religion

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A 25 year old woman who went to an Ottawa walk-in clinic for a birth control prescription was told that the physician offered only Natural Family Planning and did not prescribe or refer for contraceptives or related services. She was given a letter explaining that his practice reflected his "medical judgment" and "professional ethical concerns and religious values." She obtained her prescription at another clinic about two minutes away and posted the physician's letter on Facebook. The resulting crusade against the physician and two like-minded colleagues spilled into mainstream media[1] and earned a blog posting by Professor Carolyn McLeod on *Impact Ethics*.[2]

Professor McLeod objects to the physicians' practice for three reasons. First: it implies - falsely, in her view - that there are medical reasons to prefer natural family planning to manufactured contraceptives. Second, she claims that refusing to refer for contraceptives and abortions violates a purported "right" of access to legal services. Third, she insists that the physician should have met the patient to explain himself, and then helped her to obtain contraception elsewhere by referral. Along the way, she criticizes Dr. Jeff Blackmer of the Canadian Medical Association (CMA) for failing to denounce the idea that valid medical judgement could provide reasons to refuse to prescribe contraceptives.

However, the formation of medical judgement involves more than just signing on to a current majority opinion; there is still room in the medical profession for critical thinking.[3] The CMA acknowledges the possibility of divergent professional opinions; that is why its *Code of Ethics* requires physicians to advise patients if their views are not representative of those of the profession as a whole.[4] Perhaps Dr. Blackmer refrained from comment on the physician's medical judgement because, like Professor McLeod, he did not know the basis for it, and was thus hardly in a position to offer an informed opinion.

As Professor McLeod suggests, a face-to-face meeting with patients is normally preferable, and many physicians who will not facilitate abortion nonetheless believe they should meet with women who want one. On the other hand, as evidenced by a Facebook comment, walk-in clinic patients who want The Pill may well be angered if, after "waiting the customary two hours, " the physician does not provide it.[5] Thus, it may actually be preferable for a receptionist to notify walk-in clinic patients promptly when they arrive. Unfortunately, no single solution is likely to consistently strike the right balance between personal interaction and patient convenience or preferences.

Professor McLeod warns that physician freedom to act on moral or religious

beliefs is limited, explaining that, if it were not, Muslim physicians would refuse to accept female patients, and Catholic physicians would deny care to women who have had previous abortions. These assertions are surprising - and erroneous. In fact, Muslim physicians may treat patients of the opposite sex,[6] and a previous abortion is morally irrelevant to treatment decisions by Catholic physicians.[7] Her suggestion that the religious beliefs of Muslim or Catholic physicians would make them "uncomfortable" in such circumstances bespeaks a complete lack of intellectual engagement with Islamic medical ethics and with Catholic moral theology. There is a significant difference between discomfort that might arise in real circumstances of ethical conflict, and principled and rational decision making based on religious or moral convictions.

Finally, her claim that physicians "cannot act on moral beliefs that prevent them from providing referrals for standard services" - by which she means contraception and abortion - is contradicted by Canadian Medical Association policy[8] and by a statement of the 25,000 member Ontario Medical Association (OMA): "We believe that it should never be professional misconduct for an Ontarian physician to act in accordance with his or her religious or moral beliefs."[9]

Nonetheless, a central goal of Professor McLeod's Canadian Institutes of Health Research (CIHR) funded project[10] is to entrench in medical practice a duty to refer for or otherwise facilitate morally contested procedures. From the perspective of many objecting physicians, this amounts to imposing a duty to do what they believe to be wrong. Two other leaders of this project - Jocelyn Downie and Daniel Weinstock - insist that objecting physicians also be forced to refer for euthanasia and assisted suicide, for precisely the same reasons that Professor McLeod gives for compulsory referral for abortion and contraception.[11] Coincidentally, a third collaborator on the McLeod project is François Baylis, the editor of *Impact Ethics* - and both Jocelyn Downie and François Baylis are members of the CIHR funded Novel Tech Ethics research team that publishes *Impact Ethics*.[12]

That the state can legitimately compel people to do what they believe to be wrong and punish them if they refuse is a dangerous idea that turns foundational ethical principles upside down. The inversion is troubling, since "a duty to do what is wrong" is being advanced by those who support the "war on terror." They argue that there is, indeed, a duty to do what is wrong, and that this includes a duty to kill non-combatants and to torture terrorist suspects.[13]

CMA and OMA policy on freedom of conscience safeguards the legitimate autonomy of patients and the integrity of physicians. The policy also protects the community against a particularly deadly form of authoritarianism: a demand that physicians kill their patients or help to arrange for the killing, even if they believe doing so is wrong.

Notes

1. Murphy S., "'NO MORE CHRISTIAN DOCTORS'- Part 1: The making of a story." *Protection of Conscience Project* (http://www.consciencelaws.org/background/procedures/birth002-01.aspx)

2. McLeod C. "The Denial of 'Artificial' Contraception by Ottawa Doctors." *Impact Ethics*, 4 March, 2014 (http://impactethics.ca/2014/03/04/the-denial-of-artificial-contraception-by-ottawa-doctors/) Accessed 2014-03-13

3. Murphy S., "'NO MORE CHRISTIAN DOCTORS'- Part 2: Medical judgement and professional ethical concerns." *Protection of Conscience Project* (http://www.consciencelaws.org/background/procedures/birth002-02.aspx)

4. Canadian Medical Association *Code of Ethics* (2004): "45. Recognize a responsibility to give generally held opinions of the profession when interpreting scientific knowledge to the public; when presenting an opinion that is contrary to the generally held opinion of the profession, so indicate." (http://policybase.cma.ca/dbtw-wpd/PolicyPDF/PD04-06.pdf) Accessed 2014-02-22)

5. K__N__H__. 30 January, 2014, 11:48 am (http://www.consciencelaws.org/images/2014-01-30-rh-002.png)

6. Hathout H. *Islamic Perspectives in Obstetrics and Gynaecology*. Kuwait: Islamic Organization for Medical Sciences, 1986, p. 161-166. Islamic Medical Association of North America, *Islamic Medical Ethics: The IMANA Perspective,* p. 11. (http://issuu.com/imana/docs/ethics.1/1?e=0) Accessed 2014-03-14. McLean M. *Conscientious objection by Muslim students startling*. J Med Ethics November 2013 Vol. 39 No. 11.

7. For example: "46. Catholic health care providers should be ready to offer compassionate physical, psychological, moral, and spiritual care to those persons who have suffered from the trauma of abortion." *Ethical and Religious Directives for Catholic Health Care Services* (5th ed) United States Conference of Catholic Bishops, 17 November, 2009. (http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf). Accessed 2014-03-16. John Paul II, Encyclical *Evangelium Vitae* (25 March, 1995), 99. (http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html) Accessed 2014-03-14; Project Rachel Ministry (http://www.projectrachel.ca/) Accessed 2014-03-16

8. Murphy S. "'NO MORE CHRISTIAN DOCTORS', Appendix 'F.' The difficult compromise: Canadian Medical Association, Abortion and Freedom of Conscience." *Protection of Conscience Project*. (http://www.consciencelaws.org/background/procedures/birth002-F.aspx)

9. *OMA Urges CPSO to Abandon Draft Policy on Physicians and the Ontario Human Rights Code*. OMA President's Update, Volume 13, No. 23 September 12, 2008. *OMA Response to CPSO Draft Policy "Physicians and the Ontario Human Rights Code."* Statement of the Ontario Medical Association, 11 September, 2008.

10. *Let their conscience be their guide? Conscientious refusals in reproductive health care*. (http://conscience.carolynmcleod.com/) Accessed 2014-03-07

11. Murphy S. "'NO MORE CHRISTIAN DOCTORS'- Part 5: Crossing the threshold." *Protection of Conscience Project* (http://www.consciencelaws.org/background/procedures/birth002-05.aspx)

12. *Impact Ethics*, NTE team. (http://noveltechethics.ca/about-us/nte-team) Accessed 2014-03-16

13. Gardner J. *Complicity and Causality*, 1 Crim. Law & Phil. 127, 129 (2007). Cited in Haque, A.A. "Torture, Terror, and the Inversion of Moral Principle." *New Criminal Law Review*, Vol. 10, No. 4, pp. 613-657, 2007; Workshop: Criminal Law, Terrorism, and the State of Emergency, May 2007. (http://ssrn.com/abstract=958059) Accessed 2014-02-19