

# Using and understanding the law to protect our consciences.



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# Abortion Act (1967)

- The conscience clause (Section 4(1)) states that "no person shall be under any legal duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection: Provided that in any legal proceedings the burden of proof shall rest on the person claiming to rely on it".
- However this is subject to the next subsection (2) which maintains the duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.



- It is common belief that the conscience clause allows all doctors nurses and other health professionals to opt out. The degree of participation of different workers varies and needs to be considered individually by each worker. A secretary writing a letter of referral is not as directly involved as a nurse passing instruments. In practice, only doctors, nurses and medical students have found themselves in a position requiring recourse to this clause, though as will be illustrated later, the clause may be found lacking.



# Church teaching

- If the law accords people a 'right', this implies a corresponding 'duty' for others. *Evangelium Vitae* recognises the problems and states 'Decisions that go against life sometimes arise from difficult or even tragic situations of profound suffering, loneliness, a total lack of economic prospects and anxiety about the future. Such circumstances can mitigate even to a notable degree subjective responsibility and the consequent culpability of those who make these choices which in themselves are evil. But today the problem goes far beyond the the necessary recognition of these personal situations. It is a problem which exists at the cultural, social and political level, where it reveals its more sinister and disturbing aspect in the tendency, ever more widely shared to interpret the above crimes against life as legitimate expressions of individual freedom, to be acknowledged and protected as actual rights. ...These attacks go directly against respect for life and they represent a direct threat to the entire culture of human rights. (*Evangelium Vitae*, n.18)



# Church teaching

- **The Principle of Legitimate cooperation.**
- To actually intend the evil purpose is **FORMAL COOPERATION**, no matter how small one's share in the actual physical execution, this can include advising, counselling, promoting or condoning. **MATERIAL COOPERATION** does not intend the evil effects but because if it is **IMMEDIATE** i.e. a direct contribution to the act, the cooperator shares the responsibility for the act. On the other hand, **MEDIATE** material cooperation, which can be proximate or remote, can sometimes be justified and even necessary.



# Church teaching

- The scandal or bad example that can be set must also be weighed. Even the appearance of cooperation with evil helps this evil to continue. Any cooperation may contribute to the impression that abortion is a reasonable choice, that it is a normal part of therapeutic care, or that it is a neutral option.



# Summary on abortion

- Clear right to conscientiously object in the Act
- That right circumscribed in case law to clinicians and excluding secretaries and porters etc.
- Movement towards strict requirements to refer people on to others if you will not undertake the treatment yourself.
- BUT GMC still does not state a duty to refer except when a person is incapable of making their own arrangements.
- Option: to refer for an opinion from someone else.
  - See <http://www.cmq.org.uk/Books/abortbook.htm>



# Current issues with abortion

- Doctors signing blank forms so that the names can be filled in later (recent) .
- GMC states it will take firm action in future
- But no prosecutions now and GMC suggests law is out of date
- Doctors signing forms without ever seeing the patient (been happening for years)
- If you do refer for a second opinion stating that you do not think this is the right course of action, at least it should be hard for the doctor not to see the patient.
- BUT, you are not the decision maker and the UK gives a legal right to be seen (Not in NI)





# Conscientious objection

- Superior orders or Nuremberg
  - Used by defendants in Nazi war trials at Nuremberg
  - Essentially that following superior orders does not is no longer considered enough to escape punishment; but merely enough to lessen punishment.
  - Later refinement of whether orders are illegal or not.



# An aside

- Nuremberg trials held that the provision of abortion and contraception to Eastern European peoples (the Nazis were trying to use this method to limit and eliminate non Arian races in Eastern Europe, was a crime against humanity.
- Within 30 years this country accepted abortion of disabled children and then
- Accepted the promotion of contraception to Third world and poor nations.



# What do doctors think?

New England Journal of Medicine article has served to highlight the scope of the issue, at least in the United States (35). According to a survey of 1144 physicians, most physicians (63%) believe that it is ethically permissible for physicians to outline their moral beliefs and objections to their patients. The majority (86%) also agree that physicians must present all options regarding specific therapies and treatments to their patients – which of course means that a sizeable minority of 14% of physicians are not providing all the information required by their patients. In addition, 71% of physicians feel that a doctor has an obligation to refer a patient to another clinician to obtain a service to which the referring physician is morally opposed.

- Curlin FA, Lawrence RE, Chin MH, Lantos JD. Religion, conscience and controversial clinical practices. N Engl J Med 2007; 356 (6): 593-600.



# An example of our problem

- Savulescu (BMJ 2007) claims that:
- “A doctor’s conscience has little place in the delivery of modern medical care. What should be provided is defined by the law and consideration of the just distribution of finite medical resources, which requires a reasonable conception of the patient’s good and the patient’s informed desires. If people are not prepared to offer legally permitted, efficient, and beneficial care because it conflicts with their values, they should not be doctors.”
- Savulescu J. Conscientious objection in medicine. BMJ 2006; 332 (7536): 294- 297.



# WMA

- Physicians have a right to stay true to their personal values and morals and to exercise their independent professional judgment
- They also have the right to inform their patients of such, but not in a way that is unduly coercive or argumentative.
- May not refuse urgently needed care
- May object but not obstruct
- Physicians should provide their patients with all the information they require regardless of the personal values of the physician.
- Consider duty to refer

[http://www.wma.net/en/30publications/35whitepapers/White\\_Paper.pdf](http://www.wma.net/en/30publications/35whitepapers/White_Paper.pdf)



# GMC

- 8. You may choose to opt out of providing a particular procedure because of your personal beliefs and values, as long as this does not result in direct or indirect discrimination against, or harassment of, individual patients or groups of patients. This means you must not refuse to treat a particular patient or group of patients because of your personal beliefs or views about them.\* And you must not refuse to treat the health consequences of lifestyle choices to which you object because of your beliefs.†
- 9. Employing and contracting bodies are entitled to require doctors to fulfil contractual requirements‡ that may restrict doctors' freedom to work in accordance with their conscience. This is a matter between doctors and their employing or contracting bodies.
- 10. If, having taken account of your legal and ethical obligations, you wish to exercise a conscientious objection to particular services or procedures, you must do your best to make sure that patients who may consult you about it are aware of your objection in advance. You can do this by making sure that any printed material about your practice and the services you provide explains if there are any services you will not normally provide because of a conscientious objection.
- 11. You should also be open with employers, partners or colleagues about your conscientious objection. You should explore with them how you can practise in accordance with your beliefs without compromising patient care and without overburdening colleagues.
- 12. Patients have a right to information about their condition and the options open to them. If you have a conscientious objection to a treatment or procedure that may be clinically appropriate for the patient, you must do the following.



# GMC (2)

- a. Tell the patient that you do not provide the particular treatment or procedure, being careful not to cause distress. You may wish to mention the reason for your objection, but you must be careful not to imply any judgement of the patient.
- b. Tell the patient that they have a right to discuss their condition and the options for treatment (including the option that you object to) with another practitioner who does not hold the same objection as you and can advise them about the treatment or procedure you object to.
- c. Make sure that the patient has enough information to arrange to see another doctor who does not hold the same objection as you.

- 13. If it's not practical for a patient to arrange to see another doctor, you must make sure that arrangements are made – without delay – for another suitably qualified colleague to advise, treat or refer the patient. You must bear in mind the patient's vulnerability and act promptly to make sure they are not denied appropriate treatment or services. If the patient has a disability, you should make reasonable adjustments<sup>§</sup> to your practice to allow them to receive care to meet their needs. In emergencies, you must not refuse to provide treatment necessary to save the life of, or prevent serious deterioration in the health of, a person because the treatment conflicts with your personal beliefs.
- 14. You will not necessarily need to end a consultation with your patient because you have an objection to a treatment or procedure that may be appropriate for them. However, if you feel (or the patient feels) that your conscientious objection prevents you from making an objective assessment, you should suggest again that the patient seeks advice and treatment elsewhere.
- 15. You must not obstruct patients from accessing services or leave them with nowhere to turn.
- 16. Whatever your personal beliefs about the procedure in question, you must be respectful of the patient's dignity and views.



# What does that mean?

- You have a right (and a legal duty) to act according to your conscience.
- If you do not act according to your conscience you will lack defence in law if you are tried for a crime.
- It is difficult not to refer to colleagues in at least some instances.
- You also have a God given duty to act according to your conscience





# Remember

- What is right is almost always also good in the specific clinical situation
- eg. Not aborting has many very good outcomes
- Helping a woman to cherish the unexpected life within
- Good care as an alternative to euthanasia
  
- Going to court to defend yourself is almost always a bad idea. The courts are unpleasant places to be “in the dock”
- Better not to get there in the first place



## The patient is your first concern

- Key duty of doctor (GMC) states
- Make the care of your patient your first concern.
- We must therefore offer treatments that are good and will help people.
- But GMC expects that law will define what is and right
- GMC guidance can be immediately changed by a new law.



# If you want to defend yourself

- Have facts, knowledge and be familiar with guidance.
- Think clinically.
- Will an abortion really help this woman?
- What is the data on post abortion mental health?
- Will the MAP really help?
- Work sensitively, discuss, and be gentle.
- Judge the act not the person.
- Make good notes and think carefully.



# The Human Rights Act and Equality and Diversity

- The duty of all providers to services to do so without discrimination on grounds of sex, age religious belief etc etc.
- Therefore all employers have a duty to provide work-plans and support staff of all backgrounds so that they can contribute to the work of a Trust etc (cf Glasgow Midwives)
- Catholicism is protected both as a patient and as an employee under the Human Rights Act.



# If in trouble

- Seek help and advice early
  - From us
  - From colleagues
  - From your defence union



# Extra reading

- Abortion and the Catholic Doctor

<http://www.cmq.org.uk/Books/abortbook.htm>

- How can I advise a woman who comes to see me asking for an abortion?

<http://www.cmq.org.uk/CMQ/2013/Feb/advise-woman-re-abortion.html>

- Contraception and the Catholic Doctor

<http://www.cmq.org.uk/Books/contraceptbook.htm>

- How to avoid prescribing the morning after pill

<http://www.cmq.org.uk/CMQ/2011/3-avoid-morning-after-pill.html>

- Rape and the morning after pill

[http://www.cmq.org.uk/CMQ/2013/Aug/rape\\_and\\_MAP.html](http://www.cmq.org.uk/CMQ/2013/Aug/rape_and_MAP.html)

