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Special Section: Physicians' Exercise of Conscience: Commentaries on the AMA's Code of Medical Ethics

Report by the American Medical Association's Council on Ethical and Judicial Affairs on Physicians' Exercise of Conscience

BJ Crigger, Patrick W. McCormick, Stephen L. Brotherton, and Valarie Blake

EDITOR'S NOTE

The AMA Council on Ethical and Judicial Affairs (CEJA) develops policy for the AMA and maintains and updates its *Code of Medical Ethics*.

CEJA's report on physicians' exercise of conscience was recently included in the AMA's *Code of Medical Ethics* as "Opinion 1.1.7, Physician Exercise of Conscience." For the reader's convenience, the opinion has been included as figure 1.

ABSTRACT

As practicing clinicians, physicians are expected to uphold the ethical norms of their profession, including fidelity to patients and respect for patients' self-determination. At the same time, as individuals, physicians are moral agents in their own right and, like their patients, are informed by and committed to diverse cultural, religious, and philosophical traditions and beliefs. In some circumstances, the expectation that physicians will put patients' needs and preferences first may be in tension with the need to sustain the sense of moral integrity and continuity that grounds a physician's personal and professional life.

This article examines the implications for patients, physicians, and the medical profession when tensions arise between a physician's professional commitments and his or her deeply held personal moral beliefs. It offers guidance on when a physician's professional commitments should outweigh personal beliefs as well as when physicians should have freedom to act according to the dictates of conscience while still protecting patients' interests.

The respect and autonomy that medicine enjoys rest on the profession's commitment to fidelity and service in the patient-physician relationship and on

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individual physicians' recognition that, in becoming members of the profession, they commit themselves to upholding its core ethical values and obligations. Yet physicians are not defined solely by their profession. As individuals, physicians are moral agents in their own right and, like their patients, are

Figure 1. AMA CEJA "Opinion 1.1.7, Physician Exercise of Conscience"

Physicians are expected to uphold the ethical norms of their profession, including fidelity to patients and respect for patient self-determination. Yet physicians are not defined solely by their profession. They are moral agents in their own right and, like their patients, are informed by and committed to diverse cultural, religious, and philosophical traditions and beliefs. For some physicians, their professional calling is imbued with their foundational beliefs as persons, and at times the expectation that physicians will put patients' needs and preferences first may be in tension with the need to sustain moral integrity and continuity across both personal and professional life.

Preserving opportunity for physicians to act (or to refrain from acting) in accordance with the dictates of conscience in their professional practice is important for preserving the integrity of the medical profession as well as the integrity of the individual physician, on which patients and the public rely. Thus physicians should have considerable latitude to practice in accord with well-considered, deeply held beliefs that are central to their self-identities.

Physicians' freedom to act according to conscience is not unlimited, however. Physicians are expected to provide care in emergencies, honor patients' informed decisions to refuse life-sustaining treatment, and respect basic civil liberites and not discriminate against individuals in deciding whether to enter into a professional relationship with a new patient.

In other circumstances, physicians may be able to act (or refrain from acting) in accordance with the dictates of their conscience without violating their professional obligations. Several factors impinge on the decision to act according to conscience. Physicians have stronger obligations to patients with whom they have a patient-physician relationship, especially one of long standing; when there is imminent risk of foreseeable harm to the patient or delay in access to treatment would significantly adversely affect the patient's physical or emotional well-being; and when the patient is not reasonably able to access needed treatment from another qualified physician.

In following conscience, physicians should:

(a) Thoughtfully consider whether and how significantly an action (or declining to act) will undermine the physician's personal integrity, create emotional or moral distress for the physician, or compromise the physician's ability to provide care for the individual and other patients.
(b) Before entering into a patient-physician relationship, make clear any specific interventions or services the physician cannot in good conscience provide because they are contrary to the physician's deeply held personal beliefs, focusing on interventions or services a patient might otherwise reasonable expect the practice to offer.
(c) Take care that their actions do not discriminate against or unduly burden individual patients or populations of patients and do not adversely affect patient or public trust.
(d) Be mindful of the burden their actions may place on fellow professionals.
(e) Uphold standards of informed consent and inform the patient about all relevant options for treatment, including options to which the physician morally objects.
(f) In general, physicians should refer a patient to another physician or institution to provide treatment the physician declines to offer. When a deeply held, well-considered personal belief leads a physician also to decline to refer, the physician should offer impartial guidance to patients about how to inform themselves regarding access to desired services.
(g) Continue to provide other ongoing care for the patient or formally terminate the patient-physician relationship in keeping with ethics guidance.

informed by and committed to diverse cultural, religious, and philosophical traditions and beliefs. In some situations, the expectation that, as healers, physicians will put patients' needs and preferences first may come into tension with a physician's own need to sustain the sense of moral integrity and continuity that grounds his or her personal and professional life. In such situations, physicians must decide whether and how personal conscience should guide their professional conduct.

Preserving an opportunity for physicians to act in accordance with the dictates of their conscience is important for preserving the integrity of individual physicians and the medical profession. Ethically sound patient-physician relationships and the practice of medicine as a moral activity rest on trust in physicians' personal and professional integrity. Thus physicians should have considerable latitude to practice in accord with well-considered, deeply held beliefs that are central to their self-identity. Nonetheless, both as individual moral agents and as members of a profession dedicated to promoting the welfare of patients, physicians have a responsibility to be thoughtful and deliberative in making such decisions.

CONSCIENCE, INTEGRITY, AND DEEPLY HELD BELIEFS

When individuals speak of "acting in good conscience" or of acting in a way that preserves their "integrity," they are saying that they seek to align their decisions and actions with the deeply held beliefs that shape their self-identity as moral agents. As Martin Benjamin noted, to have integrity requires that "one's words and deeds generally be true to a substantive, coherent, and relatively stable set of values and principles to which one is genuinely and freely committed."[1] Those values and principles—which encompass not only religious beliefs, but also moral, social, and political values[2]—are central to individuals' understanding of who they are as individuals[3] and, for some, as professionals.

A claim to exercise conscience is underpinned by a claim that an act supports or violates one's integrity and deeply held beliefs. It does not rest on intuition or emotion, but requires that the individual carefully consider what is at stake for the patient, the profession, and the physician, and to be able to articulate how the values and principles that constitute the physician's identity-conferring beliefs justify acting one way or another. A claim to exercise conscience also requires a willingness to accept the consequences of that action.[4]

PHYSICIANS' PROFESSIONAL RESPONSIBILITIES

Mark Wicclair wrote that, as a profession, medicine is dedicated to "a certain degree of altruism, or suppression of self-interest when the welfare of those [it serves] requires it."[5] Physicians' freedom to practice medicine within the bounds of their conscience must be considered in light of their professional responsibilities to their patients.

With certain exceptions, physicians are free to choose whether and with whom to establish a patient-physician relationship.[6] Thus a physician must provide emergency care unless another qualified health professional is available. However, physicians may decline to provide care for any individual patient so long as the decision is not based on the patient's race, religion, sexual orientation, disease status, or other reason that would constitute discrimination against a class or category of patients.[7]

Having once taken on the care of a patient, physicians have a further duty not to abandon the patient, encompassing obligations not to neglect the patient and to "support continuity of care."[8] While a physician may ethically withdraw from a case, he or she must notify the patient of the intent to withdraw sufficiently in advance to allow transfer of care to another physician.[9]

CONSCIENCE AND PROFESSIONAL PRACTICE

In some circumstances, physicians may find the dictates of their conscience do not align with their professional obligation to provide care in keeping with a patient's medical needs and in light of the patient's values, preferences, and goals for care. Moral tension may arise when physicians are asked to provide an intervention that they believe is inconsistent with or would outright violate their deeply held beliefs, and, thus, compromise their integrity. These situations should be distinguished from cases in which physicians refuse to provide care on grounds of clinical judgment and recognized professional standards.

Moral tension can also arise when conscience dictates that the physician provide an intervention or service that is medically permitted but is prohibited, as Wicclair notes, "by law, institutional rules, employer policies, and so forth."[10] For example, when a physician feels morally obligated to prescribe emergency contraception or to care for patients regardless of their immigration status, in violation of hospital policy, law, or professional ethics.[11]

In resolving situations of moral tension, a physician must balance preserving his or her integrity with the interests of the patient, future patients, and the medical profession. Even so, as Joel Frader and Charles L. Bosk wrote, "being a conscientious medical professional may well mean at times acting in ways contrary to one's personal ideals in order to adhere to a general professional obligation to serve patients' interests first."[12] These obligations may arise more frequently when a physician works in a location or medical specialty in which access to care and referral options are limited. Or it may mean structuring one's practice to avoid, to the greatest extent possible, situations in which one would be asked or expected to provide care that creates significant challenges to one's moral integrity.

Patients, the public, and fellow professionals must be reasonably able to expect that physicians will uphold the fiduciary responsibilities of the profession and will, in general, provide legally available, medically permitted interventions or services in keeping with patients' medical needs and values, preferences, and goals for care. Physicians should use great restraint in deciding to act contrary to that general expectation.

RESOLVING OR REDUCING MORAL TENSION

For physicians facing situations of moral tension, determining how best to preserve integrity in discharging their professional ethical obligations to patients calls for thoughtful deliberation that takes into account a variety of factors. These include considerations of whether there is an established patient-physician relationship, medical need, and the burdens a decision to act in conscience will pose for the patient, the physician, and others. A physician's decision to act in conscience has ramifications at all levels of patient care: providing interventions or services, informing the patient about treatment options, and referring the patient elsewhere for care.

Patient-Physician Relationships

In some instances the patient and physician will share deeply held beliefs, and it is unlikely that situations will arise in which a physician would feel compelled to act in conscience in a way that is contrary to the patient's values and preferences. However, physicians cannot predict that they will share deeply held beliefs with all of their patients or with any one patient all of the time. A physician who knows that there are specific interventions or services he or she cannot provide "in good conscience" has a responsibility to make that clear to prospective patients before entering into a patient-physician relationship with them.[13] Before a patient-physician relationship is established, the physician's discretion to exercise conscience is at its greatest. Simply disclosing that certain services are not available is not always sufficient; how clearly the physician states his or her position, how well the patient understands the disclosure (and its implications for future care), the nature of the patient's needs (for example, emergency care), and whether another healthcare professional is available to provide care are also important factors.

Medical Need, Timeliness, and Alternatives

Medical need also constrains physicians' freedom to act according to conscience. Patients must rely on physicians' professional knowledge and skill and must trust that physicians will be dedicated to promoting patients' welfare.[14] The more immediate a patient's medical need, the more he or she must trust the physician, and the stronger a physician's fiduciary obligation must be to fulfill that trust. Physicians have the least latitude to decline to provide care that is morally objectionable to them when that care is medically needed, unless the needed care is available to the patient elsewhere in a timely fashion.[15] Conversely, physicians have the greatest latitude to decline to provide care when that care is elective, is available elsewhere, and a delay in obtaining it will not unduly compromise a patient's well-being or cause a patient to experience financial, medical, psychological, or other harm.

Harms and Burdens to Patients

The likelihood and degree of possible harm to a patient similarly constrain physicians' freedom to act on the grounds of conscience. Harms to patients can come in a variety of forms and may include physical harms, harms to dignity (as when the physician fails to respect the patient and disregards the patient's values and preferences), and psychosocial harms.[16] In this respect too, the greater the likelihood that acting in conscience will harm the patient, the less discretion a physician has, particularly when the harm in question is serious and imminent. Some harms, such as death or permanent injury, may be so significant and foreseeable that a physician's exercise of conscience is not justifiable.

Physicians should also consider other burdens that acting according to the dictates of conscience may impose on patients. Burdens can range from the inconvenience of having to go elsewhere for care that is readily available, to more significant chal-

lenges when a patient's access to care is limited by constraints on services in the local healthcare system or such patient-specific factors as health literacy or access to transportation. Time, distance to care, cost, or other logistic burden might be so severe as to outright bar the patient from obtaining necessary care. Again, the more significant the burden, the more physicians should temper their exercise of conscience in the interests of patients' welfare. By the same token, a minor inconvenience to a patient should not mean that a physician is compelled to act against deeply held personal beliefs. Yet physicians must be sensitive to the fact that what may initially seem to be a minor harm or burden could constitute a significant barrier to care for a patient, depending on the patient's individual situation.

Harms and Burdens to Physicians and Others

When a physician chooses to act according to conscience, it can have implications for other healthcare professionals. Not being able to conduct one's life in keeping with deeply held beliefs can lead to moral distress,[17] as one has fundamentally compromised one's integrity and lost self-respect.[18] The moral and psychological harm for the individual physician can be compounded if moral distress adversely affects his or her ability to provide high-quality care.[19]

Yet prohibiting physicians from exercising their conscience altogether may deter some individuals from becoming physicians in the first place or from pursuing certain specialties. It may lead a physician to become callous, disrespectful toward patients with diverging beliefs, or cavalier in upholding personal and professional commitments, thus potentially compromising the care provided to patients and putting a strain on the trust of patients and the public in the personal and professional integrity of physicians.[20]

Exercise of conscience can affect the care provided to patients at the institutional level as well. When a physician declines to provide an intervention or service on the grounds of conscience, the burden falls to others to ensure that preserving individual integrity does not disrupt practice or compromise patient care or the functioning of an institution.[21] Permitting individual physicians to exercise conscience without constraint can likewise damage professional relationships with colleagues who either do not share a physician's deeply held beliefs, or who find other ways to resolve moral tensions between their beliefs and the expectations of their profession. Finally, while patients and the public must trust the moral integrity of physicians, permitting physicians to freely exercise their conscience may, paradoxically, cause patients and the public to fear that physicians may not uphold the commitments expected of them as professionals.

THE PROBLEM OF MORAL COMPLICITY

When a physician participates in an action that is in tension with his or her deeply held beliefs, he or she may feel complicit, in some measure, in moral wrongdoing. As Edmund Pelligrino noted, complicity involves "[sharing] in the guilt of an ethically improper act" by virtue of one's level of involvement with that act.[22] It is concerned with how participating in another party's immoral action (or inaction) violates one's own moral integrity.[23]

The degree to which an individual's action (or inaction) implicates him or her in a moral wrong depends on the individual's "moral distance" from the wrongdoer and/or the act, including the degree to which the individual shares the wrongful intent.[24] If one facilitates a moral wrong, but intended a morally licit purpose, then one is not morally complicit in the wrong. Moral distance also involves the extent to which one's action can be predicted to facilitate a moral wrong.[25]

Other factors that influence moral complicity include the severity of the immoral act,[26] whether one was under duress in participating in the immoral act,[27] the likelihood that one's conduct will induce others to act immorally,[28] and the extent to which one's participation is needed to facilitate the wrongdoing.[29]

For physicians, the question of moral complicity arises when they facilitate in some manner the accomplishment of an end they believe to be morally wrong. For example, a physician who declines to provide an intervention or service, such as abortion, on grounds of conscience must still grapple with whether to inform the patient about the objected-to option and whether to refer the patient to another physician who will provide the intervention or service. (A physician who is unwilling to forgo life-sustaining treatment may similarly worry that he or she is complicit in wrongdoing with respect to informing the patient about the option to forgo care or transferring the patient to another physician who is willing to withhold or withdraw such care.) Physicians must grapple with the degree to which their actions will compromise their feelings of moral integrity—some physicians may be able to

justify some provisions of care but not others, based on their level of complicity, even if the care implicates similar moral questions (for example, the sanctity of life). It may be the case, as one example, that a physician can reconcile choosing not to participate in abortion with providing emergency or other contraception. Yet in all circumstances, whatever the dictates of conscience, physicians must recognize and fulfill their other, continuing professional ethical obligations to patients.

Duty to Inform

The duty to provide patients with the information they need to make well-considered decisions about their care is the embodiment of respect for patients' autonomy and is one of a physician's most fundamental professional obligations. As previously noted, physicians have a duty to present medical facts accurately,[30] including the risks, benefits, and costs of treatment alternatives,[31] and not to withhold information from patients.[32]

Providing information about treatment options that the physician sincerely believes are morally objectionable or about how a patient might obtain an objected-to treatment elsewhere is morally distant from what a physician's deeply held beliefs tell him or her is wrong. Providing information is sufficiently distant that the risk to a physician's integrity is outweighed by the professional obligation to inform, given the strong ethical importance of informed consent.[33] Physicians can avoid any taint of complicity by notifying prospective patients prior to initiating a patient-physician relationship about interventions or services that conscience prohibits the physician from offering.[34]

Duty to Refer

The matter of physicians referring patients to physicians who will provide an objected-to intervention or service is more challenging. Physicians have an ethical duty not to abandon their patients and to provide for continuity of care.[35] While these ground an obligation to refer a patient when a physician cannot or will not provide the needed care, referring a patient for care that violates the physician's deeply held beliefs is clearly less morally distant from the objectionable act than is providing information.

Determining whether or how to refer requires that a physician consider the medical need, risks, and burdens to the patient of referring or not referring, and the likely impact of the physician's decision on colleagues and others. The greater the likelihood or severity of harm, the stronger is a physician's duty to facilitate, in some way, a patient's access to needed care, even in the face of becoming in some measure complicit in doing what the physician believes is wrong. Conversely, when there is little risk of harm, the weaker is the duty to facilitate access to the objected-to intervention or service. Physicians may have a heightened duty to refer a patient in the context of an established patient-physician relationship.[36]

Physicians have a number of options to discharge the duty to refer, ranging from something as simple—and morally distant from wrongdoing—as providing a toll-free number or local hospital number to the patient to inquire about services, to something as formal as referring a patient to a specific physician or institution.[37]

Physicians may also avoid (or at least minimize) their moral complicity by terminating the patient-physician relationship and encouraging the patient to find another physician who is better able to meet the patient's needs.[38] However, terminating the relationship is ethically permissible only when the timeliness of care is not a factor and the physician adheres to the ethical guidelines set for terminating a relationship, including providing needed care until the patient is transferred to another physician and ensuring that the patient's records are made available to the new physician.[39]

PROTECTING PATIENTS, PRESERVING INTEGRITY

The freedom to maintain moral views and to act on them is central to a pluralist, democratic society.[40] Physicians, no less than patients, should be able to expect that they will be respected as moral agents. There is reason to think that preserving the opportunity for physicians to act according to the dictates of their conscience may, as Douglas White and Baruch Brody said, "yield better overall medical quality by fostering a diverse workforce that possess integrity, sensitivity to patients' needs, and respect for diversity."[41] In determining whether and how to exercise their conscience, physicians have a responsibility—rooted in their own status as moral agents and their commitments as medical professionals—to deliberate thoughtfully about the implications of their decisions for the well-being of patients and others and to seek ways to resolve or reduce moral tension that will not unduly compromise the physician's moral integrity nor disproportionately burden patients.

MEMBERS OF CEJA WHEN OPINION 1.1.7 WAS ADOPTED BY THE AMA IN NOVEMBER 2014

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