CHAPTER 8

Conscience Clauses, Health Care Providers, and Parents

Conscientious objection in health care is the refusal to perform a legal role or responsibility because of personal beliefs. In health care, conscientious objection can involve practitioners not providing certain treatments to their patients and parents not consenting to certain treatments for their children. Citing moral reasons, many doctors refuse to perform or in other ways participate in abortions. Some pharmacists will not fill prescriptions for RU-486, the “abortion pill,” or stock the emergency contraceptive levonorgestrel, known as Plan B. A growing number of parents are seeking exemptions from state laws mandating childhood immunizations because of religious or personal convictions.

Conscientious objection in health care always affects someone else’s health or access to care because the refusal interrupts the delivery of health services. Therefore, conscientious objection in health care always has a social dimension and cannot be framed solely as an issue of individual rights or beliefs. Parents’ decisions not to vaccinate their children for a particular disease can increase the risk of that disease not only for their own children but also for others in their community. At what point does refusal to consent to treatment constitute medical neglect? At what point does a clinician’s moral objection to providing a treatment interfere with a patient’s access to treatment, and violate professional ethical standards? Laws and professional guidelines on conscientious objection in health care must balance the respect for an individual’s beliefs against the well-being of the general public.

Conscientious Objection by Health Care Providers

Most states have “conscience clauses,” which describe a right of refusal for physicians, and in some cases for other providers and for health care organizations such as religious hospitals. Most of these state laws, as well as similar conscience clauses in federal statutes, professional codes of ethics, and institutional policies, were enacted after the passage of Roe v. Wade in 1973 to permit physicians to opt out of performing or participating in legalized abortions. Today, most medical students opt out of learning how to perform abortions, as they are permitted to do under the American Medical Association’s code of ethics. A physician who does not perform abortions—an anesthesiologist, for example—

Nancy Berlinger, PhD, is the deputy director and a research scholar at The Hastings Center.
may still be called upon, and can refuse, to participate in the procedure.

Some conscience clauses explicitly cover abortion, contraception, sterilization, and the withholding or withdrawing of life-sustaining treatments. Some of these clauses cover local conditions: in Oregon, a conscience clause describes a physician’s right of refusal concerning physician-assisted suicide, which is legal in that state. Others are general: they simply acknowledge a right of refusal on conscience grounds. Conscience clauses played a prominent role in the FDA debate over expanded access to Plan B, including over-the-counter access for women 18 and older. (Because this medication is stocked behind the counter, pharmacists are involved in dispensing Plan B even if the patient is an adult. People age 17 or younger must have a prescription to obtain Plan B from a pharmacy.) Some retail pharmacists claimed a right to both refuse to provide the emergency contraceptive and refuse to refer the consumer to another pharmacist on staff or to another pharmacy. These practices challenged the profession’s own guidelines, which recommend a “step away” procedure that allows an individual pharmacist to refuse to provide a service but does not permit this pharmacist to block access to this service. During this controversy, several states adopted conscience clause statutes specifically protecting pharmacists, while others passed legislation aimed at ensuring that individual providers did not hamper consumer access to a medically appropriate drug. In a related type of professional refusal with implications for health care, some judges have sought “blanket recusals” from hearing any case involving abortion petitions by minors.¹

### Conscientious Objection by Parents

Some forms of conscientious objection involve a conflict between civic responsibilities and personal beliefs. A citizen who refuses to comply with a military draft due to deeply-held beliefs concerning nonviolence has the right to file for “conscientious objector” status. During periods of universal conscription, conscientious objectors have typically performed alternative service, as medics in war zones or on civilian projects.

Complying with public health mandates is another civic responsibility. School immunization laws in every state require parents to have their children vaccinated against many serious, potentially fatal, or disabling communicable diseases as a condition for starting school. All states permit medical exemptions for children with health conditions such as HIV infection or for cancer treatments that impair their immune systems, making routine immunizations risky.² Forty-eight states also permit “nonmedical” exemptions based on religious belief. Twenty of these states permit exemptions based on nonreligious personal convictions.

States vary in the degree of evidence required to secure a nonmedical exemption. In some states, signing a form or checking off a box confirming that a parent is opting out on the basis of a religious conviction or personal belief—which may not have to be specified—may be all that is required. In other states, parents may be required to cite or defend specific religious doctrines that prohibit immunization. Many Web sites provide detailed guidance for parents seeking to use religious exemption statutes even if they are not members of a religious community with specific doctrines prohibiting immunization. Recently, some state legislatures have been adding nonmedical exemption categories and making it easier for parents to obtain such exemptions.³ States where it is easy to get a nonmedical exemption tend to have the largest numbers of such exemptions.

### Nonmedical Exemptions from Immunization

Some parents may seek nonmedical exemptions to routine immunizations because of strongly held religious convictions about faith healing. But par-
ents whose resistance to vaccination is not based on religious doctrine tend to have strong personal beliefs about the dangers of vaccines; in particular, the belief that certain childhood vaccines are linked to rising rates of autism. This claim has been the subject of several studies by the Institute of Medicine, which concluded that there is no scientifically credible evidence to support it. But two recent cases involving children with mitochondrial disorders who became seriously ill following vaccination—one child became autistic and the other died—have reinforced fears about immunization.

Some parents may not see the need for vaccines—they may prefer alternative medicine, they may not have firsthand knowledge of lethal childhood illnesses (having been immunized themselves as children), or they may not understand how vaccination protects a community. Resistance to immunization may also be associated with fear of government intrusion into the lives of families and the rights of parents.

The introduction of Gardasil, the human papilloma virus (HPV) vaccine, has added the issue of sexual morality to debates about the rights of parents. The vaccine protects against a sexually transmitted disease that causes cervical cancer. Many people question whether states should require adolescents to be vaccinated against a sexually transmitted disease. However, even some socially conservative groups have acknowledged that, with respect to this vaccine, the value of cancer prevention may outweigh other concerns.

Threats to “Herd Immunity”

Nationwide, the percentage of parents who invoke a personal-belief exemption is small, but increasing. It rose from under 1% in 1991 to 2.5% in 2004. In some areas, the rates of immunization refusal are much higher—families with similar beliefs and values may choose to live together, worship together, send their children to the same schools, or be part of the same home-schooling networks. Parental refusal has been implicated in the development of “hot spots,” locations with disease outbreaks.

These outbreaks resulted from a weakening of “herd immunity,” which relies on maintaining a relatively high percentage of inoculated individuals to protect the minority who cannot be vaccinated due to medical conditions or because they are too young. Compulsory vaccination has ensured herd immunity, but exemptions to vaccination diminished it sufficiently for disease outbreaks to occur in these areas:

- In Boulder, Colorado, endemic pertussis (whooping cough) has been linked to vaccination rates of just 50% among children at a local private school.
- In Philadelphia in 1991, a measles epidemic, which resulted in more than 500 cases and seven fatalities, was traced to unvaccinated children whose families were members of two faith-healing churches.
- In San Diego in early 2008, a measles outbreak among 12 children included nine whose parents had invoked California’s personal-belief exemption to opt out of vaccination and three who were not yet old enough to receive this vaccination, which is given in two doses over several years.

The weakening of herd immunity by forgoing vaccinations can also be hazardous to children who are “undervaccinated.” These children have missed or incomplete vaccinations due to lack of access to health care or frequent family relocations. While undervaccination is a separate public health problem, laws that permit nonmedical exemptions are of special concern in states with communities where undervaccination threatens herd immunity. Because vaccines are not 100% effective, allowing...
disease outbreaks to occur within unvaccinated groups can also trigger disease among people who have been vaccinated.

**Legal Considerations: Conscientious Objection and Medical Neglect**

The Supreme Court's landmark 1944 decision in *Prince v. Commonwealth of Massachusetts* states that the "right to practice religion freely does not include the liberty to expose the community or the child to communicable disease or the latter to ill health or death." When cases arise involving religious-based conscientious objection, courts may intervene to protect the health and welfare of the affected children, and, in cases where there is a risk of disease outbreak, to protect the health of the community in general. During the 1991 measles epidemic in Philadelphia, public health officials were granted a court order to immunize six children whose families were members of one of the faith-healing congregations identified as the source of the outbreak.

The legal concept of "medical neglect" refers to the failure of a parent or guardian to obtain adequate medical care for a child despite having the ability to do so. The American Academy of Pediatrics (AAP) regards medical neglect as a form of child abuse and neglect and is opposed to state laws that include religious exemptions to child protection statutes. What is unclear is how the concept of medical neglect applies to immunization refusals that involve religious- and personal-belief exemptions. During a disease outbreak, characterizing parents who refuse to vaccinate their children as abusive or neglectful may work against efforts to prevent or control disease outbreaks involving these families. The interests of these families' children, and of other vulnerable children—including those with medical contraindications—may be better served through ongoing efforts to strengthen herd immunity through vaccination campaigns and public education programs.

Pediatricians may fear that they will be held liable should an unvaccinated child contract a disease that could have been prevented through vaccination. Of particular concern is that parents may argue that the pediatrician should have done a better job of explaining the health risks of forgoing vaccination. The AAP recommends that pediatricians use a standard form, such as its "Refusal to Vaccinate" form, to document refusals and ensure that parents are informed of the possible health consequences.

**Conscientious Objection and Professional Ethics**

Health care providers with moral objections to specific health care services have an obligation to alert their colleagues and supervisors to these objections, in the interests of minimizing disrup-
tion in the delivery of care and minimizing burdens on other providers. Because physicians and other health care providers recognize a duty not to abandon patients, conscientious objection policies may specify that a professional who has invoked the right to refuse to provide a service must not interfere with the patient’s ability to obtain it elsewhere. This specification recognizes that it is professionally inappropriate for health care providers who step away from services to then step between a patient and another health care provider, whether by refusing to cooperate with the transfer of a patient’s care, refusing to make a referral, or making a patient feel uncomfortable or ashamed about seeking health care.

Allowing parents to practice conscientious objection by opting out of vaccinating their children is troubling in several ways. The sincerity of these parents’ religious or personal beliefs may not be in dispute. But why these refusals should not be treated as informed health care refusals, as the American Academy of Pediatrics recommends, is not clear. The special vulnerability of children, their dependence on their parents for health care decision-making, and the grave public health consequences of making it relatively easy for parents to become free riders while allowing them to undermine the herd immunity upon which the entire community relies—these factors argue against giving moral shelter to immunization refusals. Making them a matter of personal “belief” rather than reasoned decision wrongly suggests that these refusals are somehow different from other health care refusals. Regardless of the medical decisions at hand, it is the obligation of health care providers to give patients and their surrogates accurate information to ensure that their decisions can be well-informed.

References