



## FROM BIRTH TO DEATH AND BENCH TO CLINIC

# THE HASTINGS CENTER BIOETHICS BRIEFING BOOK

for Journalists, Policymakers, and Campaigns

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### CHAPTER 8

## Conscience Clauses, Health Care Providers, and Parents

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# conscience clauses, health care providers, and parents

by Nancy Berlinger

## Framing the Issue

Conscientious objection 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—

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## HIGHLIGHTS

- Conscientious objection in health care is the refusal to perform a legal role or responsibility because of moral or other personal beliefs.
- Most states have “conscience clauses” that describe the right of physicians and other health care providers to refuse to provide services such as abortions.
- Most of these conscience clauses, as well as similar federal statutes and professional guidelines, were enacted after the passage of *Roe v. Wade* in 1973 to permit physicians to opt out of performing or participating in legalized abortions.
- Most states also permit parents to refuse to immunize their children because of religious beliefs; 20 states permit such a refusal based on personal beliefs.
- Conscientious objection in health care cannot be framed solely as an issue of individual rights or beliefs because it always affects someone else’s health or access to care.
- Health care providers with moral objections to providing specific services have an obligation to minimize disruption in delivery of care and burdens on other providers.
- Allowing parents to opt out of vaccinating their children is ethically troubling because it can leave entire communities vulnerable to preventable diseases.

## EXPERTS TO CONTACT

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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.<sup>1</sup>

## 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 med-

## EXEMPTION FROM IMMUNIZATION

It's getting easier for parents to obtain exemptions from immunizing their children because a trend in state legislation is to add nonmedical exemption categories. Twenty states now permit exemptions based on nonreligious personal beliefs. They are:

Arizona	Nebraska
Arkansas	New Mexico
California	North Dakota
Colorado	Ohio
Idaho	Oklahoma
Louisiana	Utah
Maine	Vermont
Michigan	Texas
Minnesota	Washington
Missouri'	Wisconsin

ical exemptions for children with health conditions such as HIV infection or for cancer treatments that impair their immune systems, making routine immunizations risky.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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

### REPRODUCTIVE MEDICINE: A CASE STUDY

In an ethical opinion published in November 2007, the American College of Obstetricians and Gynecologists (ACOG) noted that health care providers working in reproductive medicine may be more likely than other providers to encounter conflicts between medical practice and personal moral beliefs because some of the most controversial health services fall within this field, including abortion, sterilization, and providing emergency contraception. The opinion said that the personal right of refusal is not absolute but is limited by the professional duties incumbent on all health care providers. In other words, the professional right of conscientious objection does not trump a patient’s right to make informed decisions or to receive access to safe and legal health care services because health care exists to serve the needs of the patient first. For months, doctors opposed to abortion complained about the opinion, and in March 2008 the Department of Health and Human Services challenged it, citing federal conscience clause statutes. ACOG then agreed to reexamine its opinion.

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.<sup>5</sup>
- 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.<sup>6</sup>
- 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

## RESOURCES

### Web sites

- [www.ncsl.org](http://www.ncsl.org) – The National Conference of State Legislatures. Includes helpful health information pages such as "Pharmacist Conscience Clauses: Laws and Legislation," "School Vaccination Exemptions," and "HPV Vaccine."

### Recent news

- Gardiner Harris, "Measles Cases Grow in Number, and Officials Blame Parents' Fear of Autism," *New York Times*, August 22, 2008.
- Rob Stein, "'Pro-Life' Drugstores Market Beliefs: No Contraceptives For Chantilly Shop," *Washington Post*, June 16, 2008.
- Jennifer Steinhauer, "Rising Public Health Risk Seen as More Parents Reject Vaccines," *New York Times*, March 21, 2008.
- Jim Ritter, "Medical Morality: Doctors Are Letting Their Conscience Dictate Your Treatment," *Chicago Sun-Times*, February 8, 2007.

### Further reading

- Committee on Ethics, American College of Gynecologists and Obstetricians, "The Limits of Conscientious Refusal in Reproductive Medicine," Committee Opinion no. 385, November 2007.
- Paul Danielson, "Judicial Recusal and a Minor's Right to an Abortion," *Northwestern Journal of Law and Social Policy*, Summer 2007.
- Robert F. Card, "Conscientious Objection and Emergency Contraception," and Christopher Myers and Robert F. Woods, "Conscientious Objection? Yes, But Make Sure It's Genuine," *American Journal of Bioethics*, June 2007.
- Nancy Berlinger, "Martin Luther at the Bedside," *Hastings Center Report*, March-April 2007.
- Rebecca Dresser, "Professionals, Conformity, and Conscience," *Hastings Center Report*, November-December 2005.



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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 shel-

ter 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

1. P. Danielson, “Judicial Recusal and a Minor’s Right to an Abortion,” *Northwestern Journal of Law and Social Policy* 125, no. 2 (2007): 125-145.
2. U.S. Centers for Disease Control and Prevention. *National Immunization Program. Guide to Contraindications to Vaccination* (Atlanta, Ga.: U.S. Centers for Disease Control and Prevention, September 2003), at: [www.cdc.gov/nip/recs/contraindications\\_guide.pdf](http://www.cdc.gov/nip/recs/contraindications_guide.pdf)
3. D.A. Salmon et al, “Public Health and the Politics of School Vaccination Requirements,” *American Journal of Public Health* 95 (2005): 778-783.
4. O.B. Saad et al. “Nonmedical Exemptions to School Immunization Requirements,” *Journal of the American Medical Association* 296, no. 14 (2006): 1757-1763
5. A. Allen, “Bucking the Herd,” *Atlantic Monthly* (September 2002): 1-4 (page numbers refer to electronic text, at [www.theatlantic.com/doc/prem/200209/allen\\_a](http://www.theatlantic.com/doc/prem/200209/allen_a))
6. M.D. Hinds, “Judge Orders Measles Shots in Philadelphia,” *The New York Times* (March 6, 1991): A23.