

The Conscience of the Pharmacist

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ABSTRACT

Recent legal efforts to force pharmacists to distribute potentially abortifacient drugs constitute a violation of conscience. This campaign of coercion violates religious freedom, professional deontology, and the right to refuse even material co-operation in acts of grave evil.

CONSIDER THE CASE of Neil Noessen.¹ A pharmacist at a K-Mart store in Wisconsin, Noessen refused to fill a prescription for a contraceptive drug tendered by a college student in 2002. The head pharmacist at the store usually substituted himself for Noessen in such transactions, but since the head pharmacist was away for the weekend, Noessen could not stand down and let the head pharmacist intervene. Noessen refused to refer the student to another pharmacy to fill the prescription. When contacted by a Wal-Mart pharmacist whom the student had subsequently approached, he refused to transfer the prescription over the phone.

Although Noessen had not violated any law, retribution was swift. The Wisconsin Department of Regulation and Licensing instructed its Pharmacy Examining Board to investigate what had become a *cause célèbre* in the media. At the end of its hearings, the Board determined that Noessen had failed to provide a minimal level of competent care and was ordered to pay a fine of \$20,000 to cover the expenses of the proceedings against him and—more ironically—to take a series of courses in ethics.

Noessen's case illustrates the growing stakes in a new frontier of the assault against professional conscience: the efforts of the state and corporations to force pharmacists to provide drugs or devices they find morally offensive.

¹ For a description of the Noessen case, see Nate Anderson, "Pharmacists with No Plan B," *Christianity Today* (August 2006), available at: www.christianitytoday.com/ct/2006/august/31.44.html.

The battle over the conscience of the pharmacist has become especially acute since the introduction of the so-called “morning after” pill, often erroneously labeled as “emergency contraception.” Composed of high doses of estrogen and progestin or of progestin alone, this pill is widely marketed under the name of *Plan B* and *Preven*. Prescribed to be taken within seventy-two hours of sexual intercourse, this pill can cause multiple different effects.² It can prevent ovulation from occurring. It can prevent the union of the sperm with an ovulated egg. It can prevent a human blastocyst, the result of a fertilized egg, from implantation, thus discarding it for destruction. In many cases the pill has no observable effects since the woman is simply not fertile. If the first two effects are properly described as contraceptive, the third effect, the prevention of implantation, is rightly described as abortifacient since it contributes to the elimination of a nascent human being who has already been conceived.

In the rhetorical campaign over the morality of the use of this pill, its defenders have denied the existence of an abortifacient effect.³ Using the American College of Obstetricians and Gynecologists’ definition of pregnancy as “starting from the moment of implantation,” they argue that this pill could not have an abortifacient effect since an abortion could not occur before the beginning of pregnancy. In fact, this definition of the state of pregnancy is an arbitrary one since the term has been loosely used throughout medical history. The definition of pregnancy cannot alter the fact that one possible effect of the use of such high-dosage progestin pills is the destruction of a nascent human being through the prevention of implantation.

Unsurprisingly, the political response to the phenomenon of

² For a technical description of the operation of this much-misunderstood drug, see American Pharmaceutical Association, *Emergency Contraception: The Pharmacist’s Role* (Washington, D.C.: American Pharmaceutical Association, 2000), 3-4.

³ A typical argument is found in Adam Sonfield, “New Refusal Clauses Shatter Balance Between Provider ‘Conscience,’ Patient Needs,” *The Guttmacher Report on Public Policy* 7/3 (August 2004): 2, where the author argues that description of the after-morning pill’s possible effects as “abortifacient” is simply due to ignorance.

pharmacists who refuse to dispense drugs they find morally offensive, notably those with an abortifacient potential, has been radically checked.⁴ Four states (Arkansas, Georgia, Mississippi, South Dakota) specifically shield pharmacists who are exercising conscientious objection to the provision of the “morning-after” pill from criminal, civil, and workplace penalties. Four other states (Colorado, Maine, Tennessee, Florida) have laws providing broad conscience protection for health-care workers, including pharmacists. But in other areas the opponents of conscience protection are prevailing. In Illinois, Governor Rod Blagojevich issued an executive order that all legal prescriptions must be filled by pharmacies in the state. California requires that pharmacists who refuse a legal prescription must refer the patient holding the prescription to an individual or institution that will fill the prescription. Deriding pharmacist conscience legislation as “refusal laws,” opponents argue that right of patients to reproductive health care trumps any claim to conscience on behalf of the pharmacist. Access, rather than conscience, becomes the key moral value in the dispute.⁵ Some even reduce the pharmacist to an agent of the state by insisting that every pharmacist has the responsibility to fill any prescription that is legal.

In defending the conscientious right of the pharmacist to refuse to provide drugs and devices that he or she believes to be gravely immoral in practice, certain philosophical considerations should be kept in mind.

First, the deontology of the pharmacist, like the broader deontology of the medical profession, is to respect and strengthen the life and health of the patient. It is not to defer to the simple desire of the patient or to surrender to the judgment of the state that a certain practice is legal. Starting with the Hippocratic Oath, many landmark codes of ethical practice for the medical profession have clearly banned the participation

⁴ For a thorough survey of state laws protecting the conscience of the pharmacist, see National Conference of State Legislatures, *Pharmacist Clauses: Laws and Legislation*; www.ncsl.org/programs/health/conscienceclauses.htm.

⁵ For a much-reprinted article attacking the conscience claims of pharmacists, see Caroline Bollinger, “Access Denied,” *Prevention*, accessible at: www.prevention.com/article/0,5778.html.

of medical personnel in the practices of abortion and euthanasia.⁶ The objection of pharmacists to the distribution of the “morning-after” pill is an objection to participating in an act that has a clear and well-documented homicidal potential. Maintaining a private moral objection to such a potentially lethal drug is insufficient, for the simple material provision of the physical object required for such an act represents an extremely troubling case of material co-operation in an evil many pharmacists cannot countenance.

In the dispute over the right of pharmacists to refuse to participate in the provision of such drugs, the analogies developed by journalists opposed to conscience-protection legislation trivialize this objection to a homicidal practice. Opponents of such laws have compared the refusal of a pharmacist to provide the “morning-after” pill with the refusal of a cashier to ring up ice cream sales by an obese customer, the refusal of a Jewish waitress to serve a shrimp casserole, or the refusal of a Mormon counter clerk to serve a coffee latté to a customer. Such parallels reduce the objections of the pharmacist to a type of moral eccentricity fueled by sectarian zeal. They ignore the fact that the refusal of medical personnel to dispense such potentially homicidal drugs is a refusal to engage in a practice that contradicts the very purpose of the pharmaceutical and medical profession: the respect of human life, the healing of disease, and the relief of pain. Conscientious objection in the areas of abortion, sterilization, physician-assisted suicide, and destructive embryonic research requires careful legal protection precisely because such acts are destructive of the foundational good of life itself and squarely opposed to the central moral purposes of the practice of medicine and of pharmacology. Legal protection of the right of pharmacists to engage in such activity is not a simple deference to the subjective right of the medical practitioner to follow his or her conscience. It is a recognition of the serious, objective considerations that rightly lead many pharmacists to refuse to participate in activities they correctly shun as homicidal.

Second, the dispute over the conscience rights of pharmacists reveals

⁶ The World Medical Association’s “Declaration of Geneva” (1948) explicitly mandates that the health-care professional should affirm that “I will maintain the utmost respect for human life from the time of its conception.”

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the confusion between rights, entitlements, and tolerated evils that dominates much of American political controversy. Simply because the courts and the legislatures have permitted certain practices to be tolerated (that is, to be performed without legal penalty), no one can demand that another person assist him or her in carrying out practices that are gravely immoral. The fact that our government currently tolerates abortifacient acts does not entail a moral obligation to facilitate such practices by providing the material means necessary for these acts. The conscience of the pharmacist can receive little consideration in a society that conflates the toleration of a certain evil with a right to perform this evil action or even more radically with the duty of fellow citizens morally opposed to this action to assist in the performance of this act by providing the material and economic resources required for its performance.

Third, the opposition to the right of pharmacists to decline to participate in the provision of potentially lethal drugs or devices also indicates a disturbing subordination of the practice of medicine and pharmacology to the state. Many opponents of conscience legislation argue that the state should simply command pharmacists to fill any prescription that is legal. Resisters should be summarily dismissed from their positions and punished as if they were criminals, along the lines of Neill Noessen. In his preemptory order that pharmacists fill all legal prescriptions, Governor Blagojevich ordered that all prescriptions should be filled with “no delay, no hassles, no lectures.” One might easily add, “no thought.” The medical practitioner is simply to follow the command of the state. Objecting to conscience legislation, the columnist Ellen Goodman argues that “the drugstore is not an altar. The last time I looked, the pharmacist’s license did not include the right to dispense morality.”⁷ In such a perspective, the very conscience of the pharmacist seems to disappear. Simply having moral opinions on the practice of medicine or the provision of drugs is branded as a dangerous and arrogant activity in itself.

Fourth, the growing efforts to coerce the conscience of pharmacists

⁷ Ellen Goodman, “Whose Conscience Rules?” in *The Boston Globe* (April 10, 2005), p. A12.

represent an assault on religious freedom and pluralism. Traditionally, one of the more positive attributes of American culture in defending the free exercise of religion has been its effort to accommodate the conscientious concerns of citizens who object to certain legal practices on religious and/or moral grounds. The nation has long accommodated conscientious objectors to war through a two-tiered system—by permitting those who were willing to serve in non-combatant military roles and by permitting those who objected to all military service to perform alternative community service. Medical doctors who object cannot be forced to participate in lethal injections performed as a species of capital punishment. The longstanding American tradition of respect for conscientious objection, especially in areas of state-sanctioned lethal activity, is tied to the recognition that this objection is often tied to deeply held religious and philosophical beliefs. To apply state coercion in this area is to assault the free exercise of religion in one of its most sensitive areas, that of life-and-death decisions. Furthermore, in a society as religiously and philosophically pluralistic as is America, coercion in these areas would inevitably reduce religious minorities to second-class citizenship.

Current efforts to limit or abolish the pharmacist's right of conscientious objection are not only an assault on the right of the individual to follow his or her religious convictions. They constitute an attack on the right of health-care communities, especially those with religious sponsorship, to follow their corporate convictions in sensitive life-and-death areas. The recent flood of legislation forcing hospitals to provide the "morning-after" pill to rape victims and the refusal to exempt health-care facilities that object to such procedures on religious and ethical grounds represents only a first step in the legal coercion of such institutions to act against their deepest beliefs concerning the respect due human life from the dawn of conception until the dusk of natural death. Using appeals to "access" and specious arguments on gender discrimination, these efforts ultimately envisage the elimination of health-care providers who respect the inviolability of innocent human life from the American landscape. As what is tolerated becomes legally obligatory, the robust religious pluralism of American society will fade. Communities may remain free to teach an alternative moral code to its own members behind the closed

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doors of the chapel, but the traditional freedom of these communities to act in collective ways that defy the culture of death will be severely constricted.

The current struggle over the right of the pharmacist to refuse to distribute the “morning-after” pill is more than a narrow dispute over the limits of professional discretion. It expresses a broader crisis of conscience for all citizens who want to respect the lives of the innocent but who find that the culture of death, once proud to conceive itself as a libertarian culture of choice, is increasingly coercing them to participate in the lethal actions of this culture. Strict legal defense of the rights of individual and communitarian conscience to refuse such participation can protect pro-life conscientious objectors from legal or workplace penalties for the exercise of their ethical convictions. It can rebut the effort to turn the tolerated evils of technological assault on nascent human life into an obligatory duty for every health-care worker. But defending this professional right of conscience in a society that increasingly views such claims of conscience as a sectarian joke, easily bullied by the state’s allegedly greater interests, will be far from easy.

