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April 2007 "Ethics in Pharmacy Practice: Respect for the Right of Conscience" 707-000-07-004-H03

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"Ethics"**

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In this lesson we discuss a topic that has become controversial. Our opinions are neutral. We do believe, however, that the considerations for the patient are of utmost importance, while moral beliefs of the pharmacist also need to be respected. This lesson provides 1.25 hours (0.125 CEUs) of credit, and is intended for pharmacists in all practice settings.

The program ID # for this lesson is 707-000-07-004-H03.

Pharmacists completing this lesson by April 30, 2010 may receive full credit.

To obtain continuing education credit for this lesson, you must answer the questions on the quiz (70% correct required), and return the quiz. Should you score less than 70%, you will be asked to repeat the quiz. Computerized records are maintained for each participant.

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The objectives of this lesson are such that upon completion the participant will be able to:

1. Distinguish between the appeal to conscience & the appeal to professional duty.
2. Describe the principles of publicity & authenticity.
3. Discuss limit on the right of conscientious objection.
4. Describe a management policy that respects the right of pharmacist conscience while assuring access by patients to needed medications & services.

All opinions expressed by the author/authors are strictly their own and are not necessarily approved or endorsed by W-F Professional Associates, Inc. Consult full prescribing information on any drugs or devices discussed.

BACKGROUND

Pharmacists come from varying ethnic, religious and social backgrounds. As homogenous as pharmacists may be professionally, they differ significantly in their personal views and preferences. All pharmacists do not think the same way, and this is a good thing. A diversity of views promotes effective critical thinking and creative problem solving. A profession is made stronger through diversity, and it is important for pharmacy to develop policies that accommodate the differing personal views of individuals. It is important also, however, that these policies not interfere with the care giving purpose of the profession or with the legal rights of patients.

Individual pharmacists may at times assert what is known as "conscientious objection" to a prescribed drug therapy. Conscientious objection may occur with drugs prescribed for purposes such as: assisted death, execution by lethal injection, termination of pregnancy, prevention of pregnancy, or other uses that some pharmacists believe to be morally troubling. The individual's right to assert a conscientious objection is respected in pharmacy. However, because a pharmacist's right of conscience may conflict with a patient's legal and ethical right to receive medication, it is important for the profession to explore the character and boundaries of conscientious objection. Patients have a right to receive legal and therapeutic medications, and prescribers have a right to have their prescriptions honored. The refusal to dispense a medication carries with it serious potential ramifications, and the profession must consider this issue seriously.

Four key questions are relevant:

- What is an appeal to conscience, and how does it differ from an appeal to professional duty?
- What does it mean to "respect" the right of conscience?
- Are there limits to the pharmacist's right of conscience?
- What is an appropriate policy for a pharmacy employer who wishes to respect the right of individual conscience and also meet the legitimate needs of patients?

THE APPEAL TO CONSCIENCE

An appeal to individual conscience is personal and subjective, founded on beliefs about rightness and wrongness, and motivated by personal sanction rather than external control. An appeal to professional duty, by way of contrast, is altruistic and objective, founded on scientific evidence and clinical observations, and motivated by professional standards of practice. In distinguishing between an appeal to individual conscience and an appeal to professional duty, the language used does not matter as much as does the true character of the interests at stake.

For example, a pharmacist may say, "As a matter of conscience, I cannot fill this order for 1 gram of gentamicin every 8 hours, because it would be harmful to the patient if I were to do so." This is an appeal to professional duty, although it uses the language of conscience. The pharmacist who refuses to fill an order for gentamicin that would likely kill the patient is acting within the role of a pharmacist based on objective scientific evidence and professional standards that are agreed to by all responsible pharmacists. Another pharmacist may say, "As a professional pharmacist I have a duty not to dispense emergency contraception, because I could not

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April 2007*

live with myself if I were to do so." This is an appeal to conscience, although it uses the language of professional duty. The pharmacist who refuses to fill this order for emergency contraception is acting outside the role of a pharmacist but within the role of a person with profoundly held beliefs. There is nothing wrong with a pharmacist making professional decisions based on personal beliefs, but it is important to distinguish these decisions from those that are based on science. Additionally, the impact and outcome on the patient must be taken into consideration.

American society has a long history of respect for the right of conscience, to the point that some individuals who have objected to war have been allowed to refuse active participation, although such individuals generally have been required to participate in public service that has not been directly related to the war effort. It is important to emphasize that the tradition of respect for conscientious objection in time of war results in the objector being allowed to step away from active participation in warfare; it does not prevent those who are willing participants from their own participation in war. The objector does not bring the war to an end. The objector simply steps aside and does something else while the war continues. Individual nonparticipation is the essence of conscientious objection. Institutional participation continues while individual participation ends.

In discussing conscientious objection, it is important to always maintain a clear distinction of that right from the equally valid but different right of objection based on professional duty. Ethical controversies are best resolved when concepts are clarified, and they are made more difficult when concepts are confused. In times past, some pharmacists have supported their refusal to dispense oral contraceptives due to personal beliefs by asserting, "you must permit me to do this because if you don't that would mean I would be required to fill a forged prescription or be required to fill a valid prescription that is contraindicated for a patient." In making this assertion, the objecting pharmacist has changed the subject and has confused the discussion. The appeal to conscience and the appeal to professional duty are as different as apples and oranges. Confusion of the two leads to frustrating and pointless discussions.

"RESPECT" FOR THE RIGHT OF CONSCIENCE

An appeal to professional duty is inherent in the practice of pharmacy; any pharmacist may (and should) assert it any time there is a potential problem with drug therapy, but the appeal to professional duty is subject to challenge after it has been exercised. A pharmacist who says, "I refuse to dispense opioid analgesic drugs to a terminal cancer patient, because the patient will require continued escalation in dosage thus causing the patient to become addicted to the drugs," has rightfully asserted a refusal based on professional duty, but the logic of the refusal is not solidly based in scientific evidence or clinical observation. This pharmacist will not find support in professional standards of practice. The pharmacist will be successfully challenged because the pharmacist has confused tolerance with addiction. The pharmacist has a right to object, but the objection is not well taken.

An appeal to conscience is not inherent in the practice of pharmacy, but instead must formally be recognized through statements that express "respect" for the individual's right to object as a matter of conscience. Once established, the right of conscientious objection, unlike the right of objection based on professional duty, is not subject to challenge. It makes no sense to say, "Your personal beliefs are incorrect." Yet, in order to establish the right, the conscientious objector is obligated to explain the basis of an objection based on conscience. The profession has a right to know what is being respected. This requirement is sometimes referred to as "publicity." Some objections based on moral positions are respected by the profession while others are not. The objector has a responsibility to inform the profession of the nature of the objection so a representative of the profession can determine the validity of the objection.

A pharmacist who says "I object as a matter of conscience to dispensing zidovudine to AIDS patients

because AIDS is God's punishment of homosexuality," will not have that right to object respected by the profession. Pharmacy respects individual beliefs that differ from those of the majority regarding specific procedures, but pharmacy does not respect beliefs based on bigotry and hatred toward individual patients. It is a procedure toward which a conscientious objection is legitimately directed, and not a person. A valid conscientious objection refers to a therapy that is morally troubling and not to a patient with whose behaviors the pharmacist disagrees.

Just as is the case with conscientious objection to participation in war, those pharmacists who object as a matter of conscience to dispensing medications must explain the basis of their objection to assure that the belief is worthy of respect. Claims of conscience are not self-authenticating. The profession must authenticate the objecting pharmacist's refusal by reviewing it to determine that it is genuine. The requirement that an objection be genuine is sometimes referred to as "authenticity." A pharmacist who says "I refuse to do this and I refuse to discuss it with you" will lose the right to object because there is no way to determine whether the objection is authentic.

LIMITS TO THE RIGHT OF CONSCIENCE

No right is absolute; along with rights come responsibilities. This includes the right of conscientious objection. A pharmacist who says, "I choose to object as a matter of conscience, and I refuse to accept responsibility for any consequences of this choice," may discover that support by the profession is minimal. The patient's right to receive medication, and the prescriber's right to have prescriptions honored, are worthy of as much respect as is the pharmacist's right of conscience. Objecting pharmacists have a responsibility to participate in a system designed to respect both rights. It is improper to assert conscientious objection to deny therapy to a patient; the goal is to respect the pharmacist's right of conscience and also provide therapy to the patient. **Pharmacists who are conscientious objectors are generally allowed to step out of the way and permit others who do not object to provide the therapy to the patient. They are not permitted to step in the way and obstruct the provision of therapy by others.** This is sometimes called "conscientious obstruction" rather than "conscientious objection," and it is not supported by the profession. Conscientious objection is not a "trump card" that automatically defeats all other interests of patients, prescribers and pharmacists who want the legal therapy to be used.

Some pharmacists may believe that the use of medication for certain purposes that they see as immoral should be illegal and should not occur in our society. This sort of political belief is valid and should be expressed in an appropriate political forum. Pharmacists have the right, in fact the duty, to be political. However, the workplace is not a political forum, and should never be used to frustrate patients' rights. Expressions of political preference, or personal belief, unrelated to professional duty, should be concealed while on the job. The pharmacy is not the place to be making political points. Political activism should be limited to political venues.

Of course, any person has the right to act in a way that violates applicable rules, if that person is willing to accept the consequences. Civil disobedience and direct action have a long and distinguished history. Mahatma Ghandi and The Rev. Dr. Martin Luther King, Jr. spent time in jail because of their beliefs. Pharmacists must realize that sacrifices may be required when one does what one thinks is right. No pharmacist ever has to do anything that is objectionable to the pharmacist. This may mean that the pharmacist will suffer disciplinary action for a refusal to dispense, and it may also mean that pharmacists who object to certain therapies should find work environments where those therapies are not used. This is the approach generally taken by physicians and nurses who object to morally troubling therapies. They avoid the issue by practicing within environments where those therapies are not used.

A POSSIBLE POLICY FOR CONSCIENTIOUS OBJECTION

It is possible for pharmacy management to respect an individual pharmacist's right of conscience, and at the same time meet the patient's need for appropriate medication. Pharmacy managers can adopt a policy based on language that incorporates both the right of refusal based on professional duty and the right of refusal based on personal conscience. In fact, many pharmacies have adopted such policies and they work well on a day-to-day basis. Here is one possible way to approach a policy for conscientious objection:

A. Objection Based on Professional Duty

1. Pharmacists have a duty to the patient to object to drug therapy if a prescription or order for medication appears to be unlawful, or if the medication is not therapeutically appropriate, or if the patient has not fully consented to using the medication.
2. If a medication is prescribed or ordered under circumstances where the medication is lawful, and is therapeutically appropriate, and receives full consent by the patient, then the pharmacist has a duty to the patient to promptly dispense the medication.
3. A pharmacist's objections to drug therapy that are based on professional duty should always be made while giving primary consideration to the goals of providing benefit to the patient and preventing harm to the patient.

B. Objections Based on Individual Conscience

1. Pharmacists are permitted to object to drug therapy if a prescription or order for medication appears to conflict with the pharmacist's personal views of morality or religious beliefs, if the pharmacist believes that his or her conscience would be harmed by dispensing the medication. Objections should be made to management, not to the prescriber or to the patient.
2. Pharmacists who object to drug therapies as a matter of conscience must inform management of such objection at the earliest opportunity. Management may establish a committee of employee pharmacists for the purpose of evaluating the authenticity of a pharmacist's claim of conscience.
3. Management must provide a reasonable accommodation of an employee pharmacist's right of conscience, to include the development of alternate means of providing pharmaceutical products and services to patients, as necessary to respect the objecting pharmacist's right of conscience. Any alternate means must avoid unnecessary inconvenience to the patient.
4. If a medication is ordered under circumstances where an employee pharmacist objects to dispensing the medication based on personal moral reasons or religious beliefs, then the pharmacist has a duty to the patient to use an alternate means of providing pharmaceutical products and services to the patient, through a mechanism established by management that reasonably accommodates the pharmacist's need not to be actively involved in the use of the medication.

RECENT LITIGATION OF APPEALS TO CONSCIENCE

Federal courts in Wisconsin and Illinois have recently issued rulings in cases related to the refusal by pharmacists to dispense oral contraceptives (OCs) and emergency contraception (EC) for religious reasons.

The Wisconsin case was filed by a pharmacist against a staffing agency, a pharmacy, and the Wisconsin Pharmacy Examining Board. In 2004 the Board had found the pharmacist to have engaged in a practice constituting a danger to the health, safety and welfare of a patient by refusing to dispense OCs to the patient. The Board reprimanded the pharmacist and limited his license. The Board ordered that prior to providing pharmacy services at any pharmacy, the pharmacist must prepare a written notification specifying in detail the pharmacy practices he would decline to perform as a result of his conscience. The pharmacist was also ordered to specify in detail the steps he would take to ensure that a patient's access to medication was not impeded by his failure to perform a service.

In July, 2005, the pharmacist applied for work with the defendant staffing agency, stating that he was a Catholic and that he would not dispense OCs. The defendant pharmacy contacted the staffing agency, looking for temporary assistance, and it agreed to accept the pharmacist despite his disciplinary record and self-imposed limitations. A regular pharmacist at the pharmacy signed a statement acknowledging that the temporary pharmacist would "not participate in the provision of contraceptive articles while contracting with our pharmacy."

During the brief time the temporary pharmacist worked at the pharmacy, the regular pharmacist never asked him to transfer, refer, renew, dispense, verify or touch OC prescriptions. Another pharmacist was always available to fill prescriptions and answer questions about birth control.

Within days after the temporary pharmacist began work, the regular pharmacist told him that he could not simply walk away from patients or leave them on hold indefinitely. The temporary pharmacist reminded the regular pharmacist of the document he had signed, and the regular pharmacist said that he must have some signal from the temporary pharmacist that a patient needed assistance if the temporary pharmacist was not going to take care of the patient.

The following day, the temporary pharmacist stated in front of the entire staff that the regular pharmacist was harassing him and pressuring him to attend to patients who were seeking OCs. The regular pharmacist denied this and the temporary pharmacist called him a liar. After consulting with management, the regular pharmacist told the temporary pharmacist that his services were no longer needed. Police had to be called to remove the temporary pharmacist from the pharmacy in a wheelchair because he refused to leave. The temporary pharmacist filed a federal lawsuit claiming religious discrimination under Title VII of the Civil Rights Act.

The Illinois case was also a Title VII case. In this situation, a chain pharmacy sought to intervene in a lawsuit brought by several of its former employee pharmacists and several other pharmacists who had not worked for the chain. In the lawsuit, the pharmacists had sued the Governor of Illinois for issuing a rule forbidding pharmacists to refuse dispensing of OCs. The pharmacists claimed that this rule violated Title VII. The pharmacy argued that in Illinois it had been forced to suspend its national referral policy that allows pharmacists to refuse to fill prescriptions based on moral or religious objections as long as the prescription could be filled by another pharmacist at that store or at a nearby store. As a result, the pharmacy had been forced to fire its former employees who were suing the Governor. The pharmacy sought to intervene in the case to seek a declaratory judgment that the Governor's rule violated Title VII because the pharmacy could not use its referral policy in Illinois.

HOW THE COURTS RULED

In the Wisconsin case, the federal judge noted that a Title VII religious discrimination claim could be based on either "disparate treatment" or the failure to make a "reasonable accommodation."

To establish a disparate treatment claim, a pharmacist would have to show that he was a member of a protected class of people, that he was meeting his employer's legitimate performance expectations, but that he suffered an adverse action and that others not in the protected class were treated more favorably. The court ruled that the Wisconsin pharmacist was not meeting the legitimate expectations of the pharmacy during the several days he worked there. He was placing patients on hold indefinitely and was refusing to assist patients in the store without notifying another pharmacist. He was disruptive and called another pharmacist a liar. Even if he had been meeting the pharmacy's expectations, the court ruled that the pharmacy had a legitimate non-discriminatory reason for terminating his employment.

The reasonable accommodation requirement means that an employer must meet the religious needs of its employee as long as the accommodation does not work an "undue hardship" on the employer. The court

held that the Wisconsin pharmacy provided the pharmacist with exactly the accommodation he sought. The pharmacist then sought an additional accommodation, seeking to avoid situations in which he might briefly interact with a patient requesting OCs. The court held that the pharmacist was not entitled to an additional accommodation under the law.

For these reasons, the federal judge in Wisconsin dismissed the pharmacist's case against the staffing agency and the pharmacy. The case against the Board was dismissed because the Board was not the pharmacist's employer.

In the Illinois case, the federal judge ruled that the chain pharmacy should be permitted to intervene as requested. The pharmacy justified to the court the need to resolve Title VII issues that affect the pharmacy within the lawsuit filed by the pharmacists. The federal court in Illinois will eventually have to resolve the issue of whether a state law forbidding a pharmacy to use a referral policy for pharmacists who object to dispensing for religious reasons violates federal law.

THE RESULT OF THE LITIGATION

Under federal law, a balance is struck between the need of employers to provide products and services to customers, and the need of employees to refrain from practices that violate their personal beliefs. As the cases reviewed here suggest, extreme positions that tip the balance in the direction of the employer or of the employee are unlikely to survive challenge. Employees have a right to object to therapies they disagree with for religious reasons and to step aside from participation in them, but they do not have the right to obstruct the pharmacy practice of others whose beliefs are different. Pharmacy employers who have worked out reasonable accommodations of their employees' individual religious beliefs through referral policies have the right to assert the appropriateness of those policies in court.

Employees have a right to be protected from religious discrimination in the workplace. This right usually means that employees cannot be required to do things that are forbidden by their religion. Under federal law, employers are required to provide what is called a "reasonable accommodation" of an employee's religious practices as long as this accommodation does not caused the employer "undue hardship." When the "reasonable accommodation" standard is applied to employee actions by courts, the requirement for employers is usually deemed to be minimal. Court cases have required employers to approve employee-arranged changes in shift, but have not required the employer to schedule employees for particular shifts. An "undue hardship" can occur simply because staff morale is adversely affected by an employee who claims religious discrimination. Thus, the right to be free from religious discrimination in the workplace is difficult to enforce in any situation other than the most egregious circumstances.

Four states (South Dakota, Louisiana, Arkansas and Georgia) have enacted laws that are usually referred to as "conscience clauses" for pharmacists. These laws generally permit pharmacists to refuse dispensing of morally troubling therapies and provide that there can be no legal consequences for pharmacists who refuse. The momentum for enactment of these laws in other states has waned in recent years. Some state legislatures are considering the adoption of laws that require pharmacists to fill prescriptions, despite the pharmacists' objections to them. A comprehensive and effective approach to pharmacist conscientious objection is unlikely to result from intervention by state legislatures in the pharmacy profession.

CONCLUSION

The pharmacy profession has taken a balanced view of conscientious objection by pharmacists. Within this balanced approach, it is not necessary to decide whether an objecting pharmacist has greater rights than a patient who needs prescribed medication. Systems have been developed to respect the pharmacist's right of conscience and also assure that the patient's access to medication is assured. These systems are common and they are effective.

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1. Does the program meet the learning objectives?

Distinguish between appeal to conscience & appeal to professional duty	Yes	No
Describe principles of publicity & authenticity	Yes	No
Discuss limit on right of conscientious objection	Yes	No

Describe a management policy that respects pharmacist conscience while assuring access by patients to needed medications	Yes	No
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2. Was the program independent & non-commercial

Yes	No
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	Poor			Average		Excellent
3. Relevance of topic	1	2	3	4	5	6 7

4. What did you like most about this lesson? _____

5. What did you like least about this lesson? _____

Please Select the Most Correct Answer

- | | |
|---|--|
| <p>1. It is important for the pharmacy profession to develop policies that accommodate the differing personal views of individuals & do not interfere with the care giving purpose of the profession or the legal rights of patients.
 A. True B. False</p> <p>2. How can an appeal to conscience best be described?
 A. Objective
 B. Founded on scientific evidence
 C. Motivated by personal sanction
 D. Motivated by professional standards</p> <p>3. In the U.S., recognition of the right by draftees to conscientious objection has led to:
 A. Cessation of warfare
 B. Nonparticipation by the objector
 C. Nonparticipation by all draftees
 D. Obstruction of a war effort</p> <p>4. On what basis might a pharmacist assert an objection related to the appeal to personal conscience?
 A. Execution by lethal injection
 B. Prevention of pregnancy
 C. Assisted death
 D. All of these</p> <p>5. A pharmacist's conscientious objection must be genuine. What is this requirement called?
 A. Veracity
 B. Authenticity
 C. Ingenuity
 D. Autocracy</p> | <p>6. An objecting pharmacist has an obligation to explain the basis of an objection on conscience. What is this objection called?
 A. Accountability
 B. Responsibility
 C. Publicity
 D. Honesty</p> <p>7. What approach is generally taken by physicians and nurses who object to morally troubling therapies?
 A. Direct action
 B. Civil disobedience
 C. Avoidance
 D. Publicity</p> <p>8. In 2004 the Wisconsin Board of Pharmacy considered a complaint against a pharmacist who had refused to dispense oral contraceptives. The Board reprimanded and placed limitations on the pharmacist's license.
 A. True
 B. False</p> <p>9. Title VII of the Civil Rights Act requires that an employee who is a member of a protected class be granted a reasonable accommodation by the employer, as long as the accommodation does not cause the employer undue hardship.
 A. True
 B. False</p> <p>10. Policies adopted by the pharmacy profession toward conscientious objection by pharmacists have taken a balanced perspective that respects all rights.
 A. True B. False</p> |
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