ANNALS OF HEALTH LAW
ADVANCE DIRECTIVE

VOLUME 19 **SPRING 2010** **PAGES 251-262**

A Plea to End Medical Imperialism: Efforts to End Physicians' Moral Interference with Quality of Care

Melanie Younger[*]

I. INTRODUCTION

"The door to 'value-driven medicine' is a door to a Pandora's box of idiosyncratic, bigoted, discriminatory medicine."[1] A physician's moral qualms can steer them away from being able to provide quality care to their patient. In essence, a physician is providing "bigoted, discriminatory medicine"[2] if they only provide treatments that are consistent with their own moral values. Morals typically consist of a set of beliefs or code of conduct that people follow based on their culture, religion, philosophy,[3] or on an interpretation of what is good or right.

Part II of this article will address how moral qualms can affect a physician's fiduciary duty to his patient and how this can lead to a diminished quality of care. A physician's personal moral beliefs and professional duties can

[*] Juris Doctor Candidate, Loyola University Chicago School of Law, Class of 2011. Ms. Younger is a staff member of *Annals of Health Law*.
[1] Julian Savulescu, *Conscientious Objection in Medicine*, 332 BRIT. MED. J. 294, 297 (2006).
[2] *Id.*
[3] Bernard Gert, *The Definition of Morality*, *in* THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2008), *available at* http://plato.stanford.edu/entries/morality-definition/.

often be conflicting, leading to a discriminatory outcome if they are unable to provide treatment, such as certain sensitive services.[4] Sensitive services include treatments that some physicians might consider to be against their morals, including family planning, abortion, infertility treatment, or end of life support.[5] When the word "treatment" is used in this article, it could be a sensitive service, but arguably it also could be any treatment with which a physician has a moral objection. The term "sensitive service" is used in this article to refer to a particular treatment that is more likely to suffer from considerable physician moral objection, such as abortion.

Informed consent, notice and referral, and decrease in trust in physicians are the three concerns patients may have if physicians' morals negatively interfere with quality of care. Part II of this article will focus on informed consent. Informed consent is an important concern because of the physician's duty to the patient.[6] If the physician does not uphold their duty and allow their morals to interfere, the quality of care is in jeopardy since the physician may be unable to provide informed consent, thereby leading to a situation where the patient does not have the requisite knowledge to make an informed decision.

Part III will discuss notice. Notice is another concern because a patient could have no knowledge of the physician's moral qualms, which could possibly delay the patient's access to treatment. This section will also discuss the referral of patients from a physician with moral qualms to one without. The concern is

---

[4] Comm. on Ethics, *ACOG Committee Opinion No. 385: The Limits of Conscientious Refusal in Reproductive Medicine*, 110 OBSTETRICS & GYNECOLOGY 1203, 4 (2007).
[5] Katherine A. White, *Crisis of Conscience: Reconciling Religious Health Care Providers' Beliefs and Patients' Rights,* 51 STAN. L. REV. 1703, 1703 (1999).
[6] Doe v. Noe, 690 N.E.2d 1012, 1018 (Ill. App. Ct. 1997).

that some patients may have no knowledge of alternative physicians. Part IV will then discuss the decrease of trust in physicians by patients. Patients will not trust their physicians if they are unsure whether physicians' morals are interfering with providing treatment, which could lead to a breakdown of the physician-patient relationship and a decrease in quality of care. Finally, part V will offer policy recommendations that suggest ways to overcome physicians' moral qualms to improve quality of care.

II. HOW PHYSICIANS' MORAL QUALMS NEGATIVELY AFFECT PATIENT QUALITY

A study by "Religion, Conscience, and Controversial Practice," shows that physicians who do not believe they are obligated to disclose information about medically available treatments that they consider objectionable may care for more than forty million Americans.[7] Despite the fact that physicians have these beliefs, they also have a duty or responsibility to conform to a certain standard of care for the safety of another against an unreasonable risk of harm.[8] In addition, physicians are bound by a fiduciary duty to protect their patients' health, especially in situations where patients' health interests conflict with physicians' self-interest.[9] A physician's refusal of treatment constitutes an imposition on the patient who does not share the physician's belief, thereby undermining patient autonomy and threatening a violation of the physician's fiduciary duty.[10]

A physician's ability to refuse to administer treatment because of a moral

---

[7] Farr A. Curlin et al., *Religion, Conscience, and Controversial Clinical Practice*, 356 NEW ENG. J. MED. 593, 599 (2007).
[8] *Doe*, 690 N.E.2d at 1018.
[9] *Id.*
[10] Comm. on Ethics, *supra* note 4, at 3.

or religious objection goes against the constitutionally guaranteed right to freedom of religion, which was to prevent the privilege of religion over non-religion.[11] Physicians with a moral objection are given a special right to refuse a legal obligation while physicians without moral qualms remain compelled to comply.[12] When physicians' morals conflict with their duty to their patient, a decrease in quality of care can result because the physician is unable to properly provide informed consent, notice, or referral services to the patient.[13] Consequently, this would result in a decrease in trust in physicians if physicians let their moral qualms cloud their legal and ethical responsibilities to their patient. Thus, when weighing the individual rights of patients, versus the rights of physicians and their ability to impose their moral views, patients' rights must always tip the scale in the furtherance of providing quality care, among other reasons.

III. INFORMED CONSENT

Physicians' inability to cast aside moral values may make it difficult for them to provide proper informed consent to patients, thereby negatively affecting quality of care. Although in the United States there is no established legal right to health care, patients do have the right to self-determination, which is the ability to determine one's own fate without external compulsion.[14] The notion of self-determination can be traced to the principles of individual liberty from the

---

[11] CATHERINE WEISS ET AL., ACLU REPRODUCTIVE FREEDOM PROJECT, RELIGIOUS REFUSALS AND REPRODUCTIVE RIGHTS 7 (2002).
[12] *Id.*
[13] Comm. on Ethics, *supra* note 4, at 3.
[14] Merriam-Webster Online Dictionary, Self-determination, http://www.merriam-webster.com/dictionary/self-determination (last visited Apr. 16, 2010).

American Revolution[15] and was supported by both statutes and common law.[16] At the core of self-determination is the right to make an informed decision: "[e]very human being of adult years and sound mind has a right to determine what shall be done with his own body."[17] The doctrine of informed consent employs a patient's right of self-determination.[18] Informed consent is when a physician provides a clear explanation of the risks and benefits of proposed treatments, alternative treatments, and the consequences of not undergoing treatment.[19] Informed consent is important because it ensures that a patient is neither misled nor coerced in making important health decisions. It is a key element in enabling a patient's autonomy or ability to make a decision.

If, however, a physician allows his moral values to conflict with his ability to provide informed consent to his patients, the patients may not receive the risks, benefits, and alternatives available, thereby infringing on their autonomous ability to choose the best treatment and decrease their quality of care. A physician may neglect to mention the best prospective treatment to a patient because of the physician's moral qualms. This could result in the patient not receiving the best treatment available, as well as having no knowledge of other treatment options.

---

[15] Eric Brahm, *Self-Determination Procedures*, BEYOND INTRACTABILITY, Sept. 2005, http://www.beyondintractability.org/essay/self_determination/.
[16] Patricia L. Selby, *On Whose Conscience? Patient Rights Disappear Under Broad Protective Measures for Conscientious Objectors in Health Care,* 83 U. DET. MERCY L. REV. 507, 510 (2006).
[17] *Id.*
[18] *Id.*
[19] *Id*. at 511.

IV. NOTICE AND REFERRAL

Currently, in situations where physicians have religious or moral objections to certain treatments, they have a duty to notify patients and refer them to another physician who can adequately administer the treatment.[20] A physician must also notify a patient of any inability to perform treatment due to moral qualms so that a patient can seek another physician, if desired. Due to a physician not being forthright about his moral qualms and providing notice to the patient, a patient may be unable to access another physician, albeit one who provides quality treatment, resulting in a decrease in quality of care.

The study by "Religion, Conscience, and Controversial Practice," noted that "nearly 100 million Americans—may be cared for by physicians who do not believe they have an obligation to refer the patient to another provider for such treatments."[21] Referrals provide patients with the ability to seek treatment from another practitioner if their initial practitioner is unable to perform treatment due to conflicting moral values. For example, "[o]ne physician may be unwilling to perform an abortion but willing to refer, while another may be unwilling to refer, believing that doing so would make him or her complicit in an immoral act."[22]

Even if a physician is willing to refer patients, referrals, in general, can result in an inefficient delivery of health care. When referred, the patient must visit another physician whose quality of care may be different from their initial

---

[20] Julie Cantor, *Conscientious Objection Gone Awry — Restoring Selfless Professionalism in Medicine*, 360 NEW. ENG. J. MED. 1484, 1485 (2009).
[21] Curlin et al., *supra* note 7, at 597.
[22] Robert D. Orr, *Doctors Weigh Morals, Ethics in Decisions on Refusing Services*, ETHICS F., July 13, 2009, http://www.ama-assn.org/amednews/2009/07/13/prca0713.htm (reply to the scenario: Do physicians have the right to refuse to offer types of care that conflict with their beliefs?).

physician,[23] which may require the patient to produce any necessary medical documentation and undergo any additional diagnostics and testing requested by the new physician. In some cases, the quality of care may be subpar, resulting in a decrease in the quality of care to the patient.

Additionally, referrals result in a discontinuity of care, and could increase the risk to a patient's health if the treatment is not timely. Referrals may also result in an inequitable situation where a disenfranchised patient, living in a resource poor area with few physicians, would have a much harder time accessing a physician who would be able to adequately perform a sensitive treatment.[24] Thus, referrals can inevitably negatively impact patient quality of care, which is inextricably linked to the physician's conflicting morals. Due to this possible negative impact in quality of care, physicians should have no right to impose their moral views on patients. Instead, the individual rights of the patient should trump the rights of the physician in furtherance of quality health care.

V. DECREASE OF TRUST IN PHYSICIANS

According to the American Medical Association Code of Ethics, the physician-patient relationship based on trust engenders physicians' ethical responsibility to place patients' welfare above their own self-interest and to advocate for their patients' welfare.[25] Therefore, if physicians place their own interest above a patient's welfare, it taints their ethical responsibility and destroys the physician-patient relationship. "Patients need assurance that the standard of

---

[23] Savulescu, *supra* note 1, at 295.
[24] Comm. on Ethics, *supra* note 4, at 5.
[25] AM. MED. ASS'N, *Opinions on the Patient-Physician Relationship 10.015*, *in* CODE OF MEDICAL ETHICS: CURRENT OPINIONS WITH ANNOTATIONS, 2008-2009 341, 348 (2001).

care is unwavering…and that they will not be presented with half-truths and shades of gray when life and health are in the balance."[26] To allow a physician's moral values to trump the rights of a patient's would debase the medical profession because society would no longer be able to trust their physicians.

Patients rely on physicians for expertise, "to be the neutral arbiters of medical care."[27] If patients cannot rely on physicians, the trust-based system that is essential for proper functioning of the healthcare delivery system will be in disrepair, leading to decreases in the quality of care. Patients participating in this dysfunctional healthcare delivery system may feel too distrustful when seeking a physician to the point where they may rather take their health care into their own hands. The final result could be a collapse in the healthcare delivery system due to the initial lack of trust of physicians' moral values. This would cause society to seek an alternative form of organizing health care: one that does not require a reliance on physicians[28] or one that mandates its physicians not to put his/her moral values above a patient's rights. Therefore, we cannot allow physicians to abuse the public's trust by asserting an unfettered right to moral values and possessing monopolistic power over the health of the public.[29]

VI. POLICY RECOMMENDATIONS

Apart from providing informed consent, prior notice, and referrals, physicians should employ other policy recommendations so that patients' rights, as well as the quality of healthcare, are preserved. First, if physicians are not

---

[26] Cantor, *supra* note 20.
[27] *Id.*
[28] Orr, *supra* note 22.
[29] R. Alta Charo, *The Celestial Fire of Conscience — Refusing to Deliver Medical Care*, 352 NEW ENG J. MED. 2471, 2473 (2005).

prepared to offer beneficial care to a patient because it conflicts with their morals, perhaps they should choose another profession.[30] "As the gatekeepers to medicine, physicians and other health care providers have an obligation to choose specialties that are not moral minefields for them."[31] At minimum, medical students should keep their ethical objections in mind when choosing a specialty.

In addition, ethics training should be a necessary component to every medical school's curriculum in order to aid medical students in dealing with moral dilemmas that will inevitably arise during their practice. A study, with an objective to assess the perspectives of medical students after taking ethics training, found that ethics training was beneficial in assisting medical students with managing ethical conflicts.[32] The medical students, whose goals for taking medical ethics included improving patient quality, stated that medical school alone does not prepare them for ethical dilemmas, giving rise to the need for more medical school education reform.[33] Though many medical schools are responding by offering medical ethics classes,[34] all medical schools should have a substantive ethics curriculum requirement for their students in order to prepare students on managing ethical conflicts.

Access to a wide variety of practitioners is imperative in resource poor areas so that patients with little resources do not have to be at the mercy of

---

[30] Savulescu, *supra* note 1, at 294.
[31] Cantor, *supra* note 20.
[32] Laura Weiss Roberts et al., *The Positive Role of Professionalism and Ethics Training in Medical Education: A Comparison of Medical Student and Resident Perspectives,* 28 ACAD. PSYCHIATRY 170, 171 (2004).
[33] *Id*. at 180.
[34] *Id.* at 179.

physicians who neglect to provide referrals.[35] Instead, they would be able to find and obtain treatment in the vicinity of the initial physician since they may be unable to travel longer distances due to financial impediments.[36] Thus, a heightened duty should be imposed on providers with moral objections practicing in poor resource areas to make sure they are in close proximity to providers that do not share the same views.[37] This increases the likelihood that referral logistics will be in place so that patients have access to sensitive services which may conflict with a physician's morals.[38] If this is not possible, the physician with the moral objection should practice in a more metropolitan setting, due to an increased likelihood of there being a wider variety of physicians willing to perform the treatment.

Physicians must also be held accountable if they compromise the delivery of medical services to patients on moral or religious grounds.[39] This could be in the form of sanctions or a removal of their license.[40] Most importantly, a physician's cultural conquest and medical imperialism should not be allowed to prevail, but instead, the right to self-determination and the preservation of the health of our society should govern.

VII. CONCLUSION

The imposition of a physician's religious or moral doctrines on patients who do not share the same beliefs is inexcusable, especially when it negatively

---

[35] Comm. on Ethics, supra note 4, at 5.
[36] *Id.*, at 4.
[37] *Id.*, at 5.
[38] *Id.*
[39] Savulescu, *supra* note 1, at 296.
[40] *Id.*

affects the health of the patient. Since all people have moral and religious values, it would be impossible to regulate regardless of whether it would be infringing on the constitutionally protected freedom of religion. There are some ways, however, to prevent friction between physicians' morals and patient autonomy. For example, mandatory ethics training and testing in medical school is necessary for physicians to manage moral dilemmas. But, why would physicians go into a certain field if they know they will have to perform certain treatments? Why would physicians choose to have their religious and moral values continually challenged?

Ethical dilemmas are so pervasive in the practice of medicine that it is almost impossible to escape them.[41] Even if a physician does not have a problem performing sensitive services at the inception of their practice, they may develop a moral objection over the course of their practice. Although physicians' moral values should be respected, when physicians take their oath to practice medicine ethically upon graduation of medical school, society trusts and expects them to take their obligations seriously.[42] Respect for physicians' religious and moral values should not come at the expense of the patients' health. A physician's conscience is not something that patients should have to bear.[43] "Whatever your religious and moral beliefs are, you really have to look at what is legal and what is

[41] Nancy Valko, *Are Pro-Life Healthcare Providers Becoming an Endangered Species?*, VOICES, Pentecost 2003, http://www.wf-f.org/03-2-Healthcare.html.
[42] Orr, *supra* note 22.
[43] Cantor, *supra* note 20.

good medicine. If it is legal and good medicine, then you shouldn't deny a patient medical care."[44]

[44] Telephone Interview with Dr. Leonard Lawson, Obstetrician & Gynecologist, Female Health Care Assocs. (Mar. 31, 2010).