



MEMORANDUM ON THE

PACE Report, Doc. 12347, 20 July 2010

***“WOMEN’S ACCESS TO LAWFUL MEDICAL CARE: THE
PROBLEM OF UNREGULATED USE OF CONSCIENTIOUS
OBJECTION”***

that will be discussed and voted in Strasbourg on 7th October 2010.

This report has been prepared at the request and for the purpose of Members of the Parliamentary
Assembly of the Council of Europe, by

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“The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him”.

Principle IV of the Nuremberg Principles

“The right of conscientious objection is a fundamental aspect of the right to freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights.”

PACE Recommendation 1518 (2001).

“The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.”

Article 10.2 of the Charter of Fundamental Rights of the European Union.

Introduction

The European Centre for Law & Justice (“ECLJ”) is an international Non-Governmental Organization dedicated to protecting human rights and religious freedom in Europe. Attorneys for the ECLJ have served in numerous cases before the European Court of Human Rights. Additionally, the ECLJ holds special Consultative Status as an NGO before the United Nations.

The proper resolution of the issues set forth in this response to Ms Christine McCafferty’s Report, “*Women’s access to lawful medical care: the problem of unregulated use of conscientious objection*” (hereinafter “McCafferty Report” or “Report”), is a matter of substantial organizational concern to the ECLJ because of the threat to the right of conscience and religious freedom belonging to healthcare providers.

The Resolution and Recommendation not only interferes with closely held moral and cultural beliefs, but it also undermines the integrity and freedom of the conscience. Additionally, it contravenes the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, and the International Covenant on Civil and Political Rights.

Among its more unacceptable provisions, this Council of Europe document asks the European Member States:

- to “*oblige the healthcare provider to provide the desired treatment to which the patient is legally entitled [i.e. abortion] despite his or her conscientious objection*”,
- to oblige the healthcare provider to take part indirectly, in all circumstances, in abortion and other critical medical practices despite their conscientious objection,
- to oblige the healthcare provider to prove “*that their objection is grounded in their conscience or religious beliefs and that the refusal is done in good faith*”,
- to deprive “*public/ state institutions such as public hospitals and clinics as a whole*”, from the “*guarantee of the right to conscientious objection*”,
- to create a “*registry of conscientious objectors*”,
- to create “*an effective complaint mechanism*” against the conscientious objectors.

The report focuses “*especially on the field of reproductive health care*” for women, i.e., mainly on abortion, but it also concerns some other practices such as assisted reproduction

and sterilization. The report also mentions “pain-relief by life-shortening means for terminally ill patients” i.e., active euthanasia.

The resolution invites European States to restrain the exercise of conscientious objection in order to facilitate access to abortion and other practices causing the termination of human life.

As Bruno Nascimbene, member of the E.U. Network of Experts, publicly said: “*No reasonable person can think that, in a society inspired by the values of freedom and western democracy, doctors and nurses who consider abortion to be homicide can be obliged to practise it. If a gap is broken into the freedom of conscience, we may be heading down a very dangerous lane*”.¹

The European Convention for Human Rights sets a floor, rather than a ceiling for States in their regulation of the exercise of conscientious freedom, as provided for explicitly under Article 9. And this floor is very high in regard to medical conscientious objection. Instead, the Report pushes down and caps the right of conscientious objection for healthcare providers. Also, the intrusion by the Council of Europe through an imposed regulatory scheme is both unnecessary, burdensome, and an intrusion into the sovereignty of each Member State to determine the extent of the right of conscience *above the floor* granted in Article 9 for their healthcare providers.

Moreover, contrary to suppositions in the Report, healthcare providers of the 47 Member States of the Council of Europe are not “*largely unregulated*.” Numerous States have statutory regulations in place and, additionally, are regulated under the guidance of professional organizational ethics standards. The Report itself points to only six (of the 47) member States which are allegedly not regulated, and the Rapporteur, Ms. McCafferty, admits that in one of those States (Sweden), “*there appears to be few problems in balancing the rights of healthcare providers with the rights of women*.”

Moreover, physicians who believe that they would violate their religious beliefs or conscience by performing an abortion cannot be coerced into participating in such an act. Unlike access to abortion or euthanasia, the fundamental rights of religious belief and practice are protected by, among other sources, the Charter of Fundamental Rights of the European Union, the European Union Council Directive 2000/78/EC (27 Nov. 2000), Articles 9 and 14 of the European Convention on Human Rights (ECHR), and also under Article 18 of the International Covenant on Civil and Political Rights (ICCPR). As the European Court of Human Rights has explained, the balancing required by the ECHR is *not applicable* where a right protected by the Convention conflicts with rights not so protected.² Furthermore, even if conscientious objection were not explicitly protected as a fundamental right, a conscientious objector’s “choice” is no less important than the “choice” of an elderly person or of a pregnant woman to end the life they are carrying.

¹ Concerning the E.U. Network of Independent Experts Opinion No. 4-2005: *The Right to Conscientious Objection and the Conclusion by EU Member States of the Concordats with the Holy See* (14 Dec. 2005) [hereinafter Opinion No. 4-2005].

² See ECHR *Chassagnou and others v. France* [GC], nos. 25088/94, 2833/95, and 2844/95, § 113, ECHR 1999-III (“It is a different matter where restrictions are imposed on a right or freedom guaranteed by the Convention in order to protect ‘rights and freedoms’ not, as such, enunciated therein. In such a case only indisputable imperatives can justify interference with enjoyment of a Convention right”).

In the following sections, this memorandum will recall that:

1. The right to conscientious objection is guaranteed in European and International laws
2. The Council of Europe and the Parliamentary Assembly have continuously promoted the right to conscientious objection
3. The right to conscientious objection is guaranteed by international professional ethical regulations
4. The right to conscientious objection is guaranteed and properly regulated in almost all democratic societies
5. The right to conscientious objection always includes immunity from liability
6. Conscientious objection applies to individuals and institutions
7. The right to conscientious objection includes immunity from discriminations
8. The right to conscientious objection excludes any duty to perform the “procedure” even if referral is not possible
9. The right to conscientious objection applies to both direct and indirect participation
10. The right to conscientious objection cannot be “balanced” with non-existing rights
11. The right to conscientious objection is guaranteed even in absence of specific national law
12. The right to conscientious objection is a symbol of freedom against totalitarian States
13. The McCafferty Report violates the principle of subsidiarity

In the appendix are presented:

- A. The Conscientious Objection Laws in the Council of Europe Member States
- B. The Laws of the United States & Individual States protecting Conscience for Health Care Professionals
- C. The Draft Resolution and Report of Ms McCafferty

1. The right to conscientious objection is guaranteed in European and International laws

Healthcare providers, and specifically physicians, stand on firm ground in adhering to their consciences and religious beliefs when declining to participate in the termination of a human life. As mentioned above the fundamental rights of religious belief and practice are protected under Articles 9 and 14, among others, of the European Convention on Human Rights (ECHR), and additionally, under Article 18 of the International Covenant on Civil and Political Rights (ICCPR). Furthermore, the right to conscientious objection is specifically recognized in the Charter of Fundamental Rights of the European Union. That Charter provides in its Article 10 protecting the freedom of thought, conscience and religion:

- 1 *Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.*
- 2 *The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.*³

³ Official Journal of the European Communities, C364/1, 2000/C 364/01 (18 Dec. 2000), art. 10.

The European Union’s Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation also provides protection to the freedom of conscience of medical practitioners. The Directive prohibits direct and indirect discrimination, based upon, *inter alia*, religion or belief.⁴ These provisions are likely applicable to a refusal to permit a medical professional to exercise his or her right of conscience.

Within the European Convention on Human Rights, article 9 protecting *Freedom of thought, conscience and religion* and article 14 on the *Prohibition of discriminations*, provide broad protection for the freedom of conscience of healthcare providers who decline participation in the termination of a human life.

It is only when the collaboration to the practice objected is inexistent or, at least, passive and very distant, that the European Court of Human Rights has limited the benefit of the right to conscientious objection. For example, the ECHR has ruled in the case ***KNUDSEN against Norway***⁵ that a Priest cannot refuse to accomplish his official duties (marriage registration) as a protest against the legalisation of abortion by the Parliament of Norway. The Priest can still freely preach against abortion, but it does not justify non-performance of his obligations to carry out other activities conducted in collaboration with the State, since the link between his personal activity and the performance of abortion is too attenuated. Similarly, in the case ***Jean BOUESSEL du BOURG against France***⁶, the Court has also ruled that a taxpayer cannot refuse to pay taxes towards State revenue used to fund objectionable purposes, such as abortion, because the link between the tax and the performance of abortion is too remote.

Otherwise, when the collaboration to the performance of the “procedure” is either active or “passive and narrow”, whatever the collaboration is direct or indirect; the right to conscientious objection is fully grounded on Article 9. Thus, in the recent ***TYSIAC v. Poland***⁷ case, the European Court clearly refused to limit the right to conscientious objection, when the applicant (as well as a third party) complained that “a gynaecologist could refuse to perform an abortion on grounds of conscience”, and further complained that “a patient could not bring a doctor to justice for refusing to perform an abortion” (§ 100). The Court clearly refused to undermine, at any moment in its decision, the freedom of conscience of medical practitioners.⁸

The right to freedom of conscience is also protected by Article 18 of the ICCPR, and in addition to its protections carrying legal force for conscientious objectors, its interpretation also lends itself to the interpretation of Article 9 of the ECHR.

There is no explicit discussion in the Human Rights Committee (HRC) General Comment No. 22, interpreting Article 18, which addresses the right of medical professionals. However, the

⁴ Council of the European Union, *Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*, §§ 11-12, Articles 1-2.

⁵ ECHR, 8 March 1985, *Knudsen v. Norway*, Application n° 11 045/84.

⁶ ECHR, 18 Feb. 1993, *Jean BOUESSEL du BOURG v. France*, Application n° 20747/92.

⁷ ECHR, 20 March 2007, *Tysiac v. Poland*, Application No. 5410/03.

⁸ *Tysiac v. Poland*, no. 5410/03, § 124, 20 March 2007. In that case, the European Court has validated the substance of the Polish restrictive abortion laws which tolerate abortion only when medically necessary to preserve the mother’s life or health. The Court simply determined that Poland’s technical *procedures* for obtaining a *medically necessary* abortion violated Article 8 of the European Convention on Human Rights.

HRC unambiguously interprets Article 18 as to military service objectors in a manner that cannot be differentiated from the plight of healthcare providers facing an obligation to perform a more than disdainful procedure, as both involve *lethal force* - taking the life of another:

*Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under article 18. . . . The Covenant does not explicitly refer to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.*⁹

Healthcare providers who decline to participate in abortion or euthanasia based upon moral conscience are no less concerned with the taking of another's right to life than are those who refuse to perform military service due to an obligation to use lethal force on another human being.

2. *The Council of Europe and the Parliamentary Assembly has continuously promoted the right to conscientious objection*

Because the Council of Europe has for the past 43 years promoted the right of conscientious objection, in particular in the field of military service, the Council cannot now turn to quell that right simply because it is grounded in another aspect of law that is in the throes of political and moral dispute. It would betray the Parliamentary Assembly's prior position on conscientious objection, as it would declare that medical practices causing the termination of a human life are more necessary and essential for the sake of society than the military service, and therefore should be compulsorily performed. In fact, if on one hand there is a general duty to perform one's military service (to which some people can object), on the other hand, there is *no* such duty to perform an abortion; this is why conscientious objection in the medical field is much more protected by national and international law than conscientious objection to the military service.

To change its position now at the behest of those wishing to promote abortion as a fundamental right (which it is not) would thwart the very purpose of preserving foundational human rights. In 1967, the Council of Europe Parliamentary Assembly adopted Resolution No. 337 and Recommendation No. 478, addressing the strong need to recognize the right of conscientious objection with regard to military service; the Resolution "*clearly recognize[d] conscientious objection as a human right: 'Persons liable to conscription for military service who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service shall enjoy a personal right to be released from the obligation to perform such service.'*"¹⁰ The Assembly further based this right in "the fundamental rights of the individual in democratic rule of law

⁹ Office of the High Commissioner for Human Rights, Human Rights Committee, *General Comment No. 22: The right to freedom of thought, conscience, and religion (Art. 18)*:30/07/93.CCPR/C/21/Rev.1/Add.4, *General Comment No. 22*, ¶ 11 (1993), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d1167cc12563ed004d8f15?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?OpenDocument).

¹⁰ Recommendation 478 (1967), on the Right of Conscientious Objection, Assembly Debate on 26 Jan. 1967.

States which are guaranteed in article 9 of the European Convention on Human Rights, that is, the individual's freedom of conscience and religion."¹¹

Those resolutions have since been followed by Recommendation No. 816 (1977) and Recommendation No. R(87) of the Committee of Ministers, in 1987. In 2001, the Parliamentary Assembly has in addition adopted a Recommendation 1518 (2001)¹², underlining that : "*The right of conscientious objection is a fundamental aspect of the right to freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights.*"¹³

3. *The right to conscientious objection is guaranteed by international professional ethical regulations*

The vast majority of the CoE Member States are regulated by professional ethics rules and guidelines through membership in both the International Federation of Gynecology and Obstetrics ("FIGO") and the World Health Organization ("WHO"). The guidelines provide, *inter alia*, ethical guidance regulations for medical professionals which pertain to a medical professional's right to conscientiously object to performing abortions and other practices causing the termination of a human life.¹⁴

The International Federation of Gynecology and Obstetrics (FIGO) provides¹⁵ that "*4. Practitioners have a right to respect for their conscientious convictions in respect both of undertaking and not undertaking the delivery of lawful procedures, and not to suffer discrimination on the basis of their convictions.*"

The World Health Organization's regional office in Europe provides in its consultative guidelines for its European Member States concerning abortion practices¹⁶ that "*Health workers have a right to conscientious objection to providing abortion*".¹⁷

¹¹ *Id.* at 89.

¹² Recommendation 1518, *Exercise of the right of conscientious objection to military service in Council of Europe member states* (2001) (the Recommendation "text [was] adopted by the Standing Committee, acting on behalf of the Assembly, on 23 May 2001").

¹³ Most recently, the Council of Europe's *Draft Recommendation of the Committee of Ministers to member states on human rights of members of the armed forces* continued to recognize the "freedom of thought, conscience and religion" under Article 9. Steering Committee for Human Rights (CDDH), Committee of Experts for the Development of Human Rights (DH-DEV), DH-DEV-FA(2009)008final (Strasbourg, 25 Sept. 2009).

¹⁴ Information pertaining to both FIGO and WHO, together with the relevant regulations and guidelines, are set forth in Appendix, attached hereto.

¹⁵ Int'l Fed. of Gynecology & Obstetrics, *Recommendations on Ethical Issues In Obstetrics and Gynecology* by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction (Oct. 2009), *available at* <http://www.figo.org/files/figo-corp/Ethical%20Issues%20-%20English.pdf>.

¹⁶ World Health Organization Regional Office for Europe, *Guidelines*, http://www.euro.who.int/reproductivehealth/guidelines/20021015_1 (last visited Nov. 21, 2009).

¹⁷ "*Health workers have a right to conscientious objection to providing abortion, but they have an ethical obligation to follow professional ethical codes, which usually require health professionals to refer women to skilled colleagues who are not, in principle, opposed to termination of pregnancy allowed by law. If no alternative provider is available, the health worker must provide abortion to save the woman's life or to prevent permanent damage to her health in accordance with national law. When a hospital, clinic or health centre has been designated as a public facility offering services allowed by law, it cannot endanger women's lives or health by refusing services. It should provide abortion services on the grounds allowed by the law.*" World Health

4. *The right to conscientious objection is guaranteed and properly regulated in almost all democratic societies*

In Europe, all 47 Member States have constitutional protections for freedom of conscience and have elaborated on this right in the specific context of medicine. In addition, all the Council of Europe member States are signatories of the European Convention, which provides a international protection for freedom of conscience. Those provisions fully apply in the specific context of employment and medicine. Also, as Ms McCafferty acknowledges: “*Many member states have enacted laws, ethical codes and occasionally regulations or guidelines, guaranteeing the right to conscientious objection in healthcare settings, and the national courts of some countries have developed jurisprudence on this topic.*” Those European legislations are available in the appendix attached hereto.

However, Ms McCafferty pretends that “*the practice of conscientious objection is inadequately regulated or largely unregulated*” in “*the majority of Council of Europe member states.*” In fact, one of the aims of McCafferty’s text is to transform the right of conscientious objection as set forth through conscience clauses into an exception to the general rule, obliging healthcare providers to provide the “health service” requested by the individual.

By doing so, Ms McCafferty simply tries to implement the pro-abortion agenda. Another pro-abortion activist, Mr Ira Glasser, Director of the *American Civil Liberties Union* has been quoted as calling for the abolition of conscientious objection for medical professionals:

*Much of the debate focused on strategy, with participants wondering whether it was better to work toward improving and narrowing conscience clauses or to fight to eliminate them altogether. ... Although reproductive rights activists should still work to improve conscientious objections, their ultimate goal should be getting rid of them.*¹⁸

In the United States, the federal government and forty-seven States, in addition to Guam and the Virgin Islands, provide legal protection for health care professionals who refuse to participate in abortion procedures based on religious or conscientious grounds. Only three (3) States in the United States do not provide for the civil rights of healthcare providers with regard to conscience laws: Alabama, New Hampshire, and Vermont. In the appendix are the laws in the remaining States and territories. Below are two typical examples of State legislation:

Organization Geneva, *Safe Abortion: Technical and Policy Guidance for Health Systems*, 2003, at 66, <http://whqlibdoc.who.int/publications/2003/9241590343.pdf>.

¹⁸ Denise M. Burke, *Federal Rights of Conscience Protections: Holding the line against mounting attacks*, in Americans United for Life, *Defending Life 2009*, 573 (AUL 2009) (quoting Ira Glasser, 2002 ACLU Executive Director, *Conscientious Objections and Reproductive Rights*, 2002 Executive Summary, at 10, *quoted in* United States Conference of Catholic Bishops, *The Campaign To Force Hospitals To Provide Abortion*, 1 (Sept. 2003), available at <http://www.usccb.org/prolife/issues/abortion/THREAT.PDF>), available at <http://dl.aul.org/wp-content/uploads/pdfs/DL09--ALL.pdf>.

ARKANSAS, Ark. Code Ann. § 20-16-601(a)-(b)

(a) No person shall be required to perform or participate in medical procedures which result in the termination of pregnancy. The refusal of any person to perform or participate in these medical procedures shall not be a basis for civil liability to any person nor a basis for any disciplinary or any other recriminatory action against him or her.

(b) No hospital, hospital director, or governing board shall be required to permit the termination of human pregnancies within its institution, and the refusal to permit the procedures shall not be grounds for civil liability to any person nor a basis for any disciplinary or other recriminatory action against it by the state or any person.

FLORIDA, Fla. Stat. Ann. § 390.0111(8)

(8) REFUSAL TO PARTICIPATE IN TERMINATION PROCEDURE. – Nothing in this section shall require any hospital or any person to participate in the termination of a pregnancy, nor shall any hospital or any person be liable for such refusal. No person who is a member of, or associated with, the staff of a hospital, nor any employee of a hospital or physician in which or by whom the termination of a pregnancy has been authorized or performed, who shall state an objection to such procedure on moral or religious grounds shall be required to participate in the procedure which will result in the termination of pregnancy. The refusal of any such person or employee to participate shall not form the basis for any disciplinary or other recriminatory action against such person.

5. *The right to conscientious objection always includes immunity from liability*

In order to abusively “oblige the healthcare provider to provide the desired treatment to which the patient is legally entitled despite his or her conscientious objection”, the McCafferty draft Resolution mandates that Member States create “an effective complaint mechanism” “that can address abuses of the right to conscientious objection and provide women with an effective and timely remedy.”

From a juridical point of view, the “conscience clause” is nothing other than an official immunity from liability for refusing to participate in abortion. The essence of the “conscience clause” provides immunity to the medical practitioner. Similar to Parliamentarians, this immunity is a condition to their freedom: only such an immunity may effectively protect the free exercise of the professional and ethical duties of the profession.

Most of the States of Europe and the USA explicitly protect medical staff and institutions against liability for refusing to perform or participate in any abortion or in any related practice. Those legislative protections provide an immunity from liability, such as Mississippi provides:

*No health-care provider shall be civilly, criminally, or administratively liable for declining to participate in a health-care service that violates his or her conscience.*¹⁹

Louisiana, among the many jurisdictions, provides another example of good practice:

A. No physician, nurse, student or other person or corporation shall be held civilly or criminally liable, discriminated against, dismissed, demoted, or in any way prejudiced or damaged because of his refusal for any reason to recommend, counsel, perform, assist with or accommodate an abortion.

*B. No worker or employee in any social service agency, whether public or private, shall be held civilly or criminally liable, discriminated against, dismissed, demoted, in any way prejudiced or damaged, or pressured in any way for refusal to take part in, recommend or counsel an abortion for any woman.*²⁰

6. *Conscientious objection applies to individuals and institutions*

The European Court of Human Rights has repeatedly affirmed that institutions, such as hospitals, hold a legitimate interest in being consistent with their moral or ethical ethos, and may for example forbid their staff not only to practice but also to promote abortion.

In the case of *ROMMELFANGE v. the Federal Republic of Germany*²¹ the European Commission on Human Rights ruled that a hospital is entitled to restrict its staff from advocating in favour of abortion. In this case, the Commission ruled that the hospital was entitled to dismiss Dr Rommelfange, because he took public standings contrary to the ethical positions of his employer. Therefore, a hospital is naturally entitled to hold ethical positions on sensitive practices. This ruling applies to any kind of hospitals, both private and public, since public hospitals are not necessarily devoid of ethical references.

More recently, in the case *LOMBARDI VALLAURI v. Italy*²², the Court confirmed the *ROMMELFANGE* case law and applied the article 4 of the Directive 78/2000/CE⁵ (§78), considering, in the context of a Catholic institution, that an institution with a moral ethos is entitled to preserve its ethos, even if it requires limiting rights and freedoms of other people.

7. *The right to conscientious objection includes immunity from discrimination*

The McCafferty Report leads to direct discrimination against any person who refuses to perform or participate in any abortion, or in any related practices such as assisting, accomplishing, or performing a human miscarriage, euthanasia, or any other death of a human foetus or embryo. It leads to a violation of their fundamental freedom of conscience and to numerous acts of discrimination in the field of employment.

¹⁹ MISSISSIPPI, Miss. Code Ann. § 41-107-5.

²⁰ LOUISIANE LA. REV. STAT. ANN. § 40:1299.31.

²¹ Comm. Eur. DH, 6 Sept. 1989, n° 12242/86, Rommelfanger c/ RFA : DR, n° 62, p. 151.

²² CEDH, 20 oct. 2009, Lombardi Vallauri c. Italie, Application no 39128/05.

Article 14 of the Convention, *Prohibition of discrimination*, provides for equal protection and application of Article 9 for all healthcare providers, regardless of religious belief:

*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*²³

Thus, no employer shall discriminate against any person who refuses to perform or participate in any abortion or in any related practice. Medical practitioners are often pressured to participate in an abortion. Like nurses who refuse to participate in an abortion, these medical practitioners are often discriminated against in their career.

As the Court explained in *Thlimmenos v. Greece*,²⁴ “[t]he right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”²⁵

Democratic legal standards explicitly prohibit discrimination against those who refuse to perform or participate in any abortion or in any other practice causing the termination of a human life. For example, the *U.S. Federal Law*, 42 U.S.C. § 300a-7(c), “Sterilization or Abortion” provides that,

No entity [receiving certain government funding] . . . may-- (A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or (B) discriminate in the extension of staff or other privileges to any physician or other health care personnel, because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.

At the State level, nearly all American States explicitly prohibit discrimination against the conscientious objectors. For example, the law in *Minnesota* provides that,

*No person and no hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion for any reason.*²⁶

²³ ECHR, art. 14.

²⁴ *Thlimmenos v. Greece* [GC], no. 34369/97, ECHR 2000-IV (Court agreed with applicant that a criminal conviction for failing to where a military uniform did not permit authorities to refuse to appoint him to post of chartered accountant under Article 14 taken in conjunction with Article 9).

²⁵ *Id.* § 44.

²⁶ Minnesota § 145.414(a)-(b).

8. *The right to conscientious objection excludes any duty to perform the “procedure” even if referral is not possible*

Ms McCafferty pretends that healthcare providers have a “[d]uty to treat if referral is not possible”. This would be true only for medical *treatments*, and in case of emergency. “Procedures” concerned by conscientious objection, such as abortion and euthanasia are not medical treatments, and therefore are not concerned by this professional duty.

9. *The right to conscientious objection applies to both direct and indirect “participation”*

According to Ms. McCafferty’s report, only the “*individual healthcare providers directly involved in the performance of the procedure in question*” would, in some circumstances, be allowed to object. In other words, all the medical and paramedical employees such as nurses and assistants would not be allowed to object at all, in any circumstance. Only the medical staff or doctor personally required to perform (by his own hands) the abortion (or another practice causing the termination of a human life), may in some restricted circumstances, be permitted to object. However the nurses and other staff helping him would not.

In addition, the healthcare provider would be obliged to participate *indirectly, or to mediate*, the performance “*of the procedure in question*”. As clearly stated by the Draft Council of Europe text, in all circumstances, the “*healthcare providers*” would still be required to “*provide information*” on the procedure in question, “*refer patients to another healthcare provider*” who would perform the “*procedure*”, and “*ensure that the patient receives appropriate treatment from the healthcare provider to whom he or she has been referred.*” In other words, the healthcare providers would have the duty to participate indirectly in the performance of an abortion and other objectionable practices. Thus, healthcare providers would be morally and professionally accountable for their actions.

As discussed above concerning the European Court of Human Rights case law regarding medical conscientious objection, it is only when there is no effective participation at all in the “*procedure*” that the right to conscientious objection may not apply. This approach appears clearly from decisions of the Court, particularly *KNUDSEN against Norway*²⁷, *PICHON and SAJOURS v. France*²⁸, *Jean BOUESSEL du BOURG against France*²⁹, *TYSIAC v. Poland*³⁰. Conscientious objection applies to healthcare professionals refusing to counsel, perform, or assist directly or indirectly medical treatment or procedures. Any medical practitioner taking part in an abortion holds a right to conscientious objection, whether his participation is direct or indirect, so long as his participation is necessary and part of the performance of the “*procedure*”. This applies for example to all the staff such as the assistants, the nurses or the anaesthetist. For example, the French law very broadly provides that,

« *Un médecin n'est jamais tenu de pratiquer (...). Aucune sage-femme, aucun infirmier ou infirmière, aucun auxiliaire médical, quel qu'il soit, n'est tenu de*

²⁷ ECHR, 8 March 1985, *Knudsen v. Norway*, Application n° 11 045/84.

²⁸ ECHR, 2 Oct. 2001, *Pichon and Sajous v. France*, Application n° 49853/99,

²⁹ ECHR, 18 Feb. 1993, *Jean BOUESSEL du BOURG v. France*, Application n° 20747/92.

³⁰ ECHR, 20 March 2007, *Tysiac v. Poland*, Application No. 5410/03.

concourir à une interruption de grossesse. »³¹ “Concourir” means to assist directly or indirectly.

Among many similar other laws, the State of Wyoming provides a similar provision:

*No person shall, in any way, be required to perform or participate in any abortion or in any act or thing which accomplishes or performs or assists in accomplishing or performing a human miscarriage, euthanasia or any other death of a human foetus or human embryo.*³²

The law of Texas is explicit concerning indirect participation:

*A physician, nurse, staff member, or employee of a hospital or other health care facility who objects to directly or indirectly performing or participating in an abortion procedure may not be required to directly or indirectly perform or participate in the procedure.*³³

10. The right to conscientious objection cannot be “balanced” with non-existing rights

Ms McCafferty’s Resolution mandates the Member States “to balance the right of conscientious objection of an individual not to perform a certain medical procedure with the responsibility of the profession and the right of each patient to access lawful medical care in a timely manner.” The line of attack to “balance” those “rights” is to “oblige the healthcare provider to provide the desired treatment to which the patient is legally entitled despite his or her conscientious objection.”

The fundamental right to freedom of conscience and religion guaranteed by the Convention cannot be subordinated to any “non-existing” rights or freedoms, such as access to non-medical treatments, like abortion or euthanasia. Erroneously, Ms McCafferty calls for a *balancing* of “rights” between conscientious objectors and patients, but the European Court of Human Rights’ interpretation of the Convention demands the contrary: non-enunciated or hypothetical “rights” must be subordinated to those rights explicitly recognized and guaranteed by the Convention’s text. Because abortion, euthanasia, and other practices causing the termination of a human life are not recognized as rights under the Convention, it would be contrary to the Convention to “balance” access to such procedures and practices against Article 9 rights. See for example the Grand Chamber of the Court ruling in *Chassagnou and others v. France*.³⁴

Ms McCafferty’s approach is fatally flawed because it presents abortion and other practices causing the termination of a human life such as euthanasia, as any other indifferent medical

³¹ Article L. 2212-8 CSP. Il en est de même pour les interruptions médicales de grossesse (article L. 2213-2 CSP).

³² Wyo. Stat. Ann. § 35-6-106 (LexisNexis 2010).

³³ Tex. Occ. Code Ann. § 103.001 (LexisNexis 2009).

³⁴ *Chassagnou and others v. France* [GC], nos. 25088/94, 2833/95, and 2844/95, § 113, ECHR 1999-III (“It is a *different matter* where restrictions are imposed on a right or freedom guaranteed by the Convention in order to protect ‘rights and freedoms’ not, as such, enunciated therein.”).

“procedure”, in order to abusively present them as part of the general “right to health”. The Report implies that abortion is just another form of routine medical care. As such, it could then be regulated as any other medical care treatment option, and thus falls under the same category as any other contractual obligation. Nonetheless, even as a mere healthcare treatment option under normal care circumstances, healthcare professionals should still not be obligated to perform or participate in an abortion procedure against their will. Healthcare professionals may refuse to perform such action based on their professional opinion that the intervention is not warranted (*e.g.*, the risk is too great, or there is no health emergency, etc.). The choice of procedure would remain within the professional’s medical judgment. In these situations, the right of conscientious objection is not even required for normal care.

11. The right to conscientious objection is guaranteed even in absence of specific national law

By principle, the termination of a human life is forbidden, at every stage of the life. The right to conscientious objection exists without any specific law because it finds its ground in the ethical nature of the medical practice. Because euthanasia or abortion is a “social ill”, the right to conscientious objection exists. Laws which allow intrusion of physical integrity without a therapeutic end (such as laws decriminalising abortion, euthanasia, or research on the embryo) institute exemptions to the principle of dignity. Because those practices are procedures without a *therapeutic end* and *take life*, conscientious objection is always available.

Euthanasia or abortion, as a voluntary termination of a life, is not a matter of belief or opinion; termination of life is a fact. Therefore, the right to conscientious objection is not part of a more general right to have “an opinion” or a religious belief; it is a right to not take part in the voluntary termination of a human life when such termination is permitted by law, whatever you have a religious belief *or not*. Thus, the purpose of the “conscience clause” is less to permit anyone to object than to make sure that no one is forced to participate against their will. This also explains why Ms McCafferty is fundamentally wrong when she mandates that the “*objecting healthcare providers have the burden of proving that their objection is grounded in their conscience or religious beliefs and that the refusal is done in good faith.*” (§19).

Contrary to Ms McCafferty’s very personal opinion, the good faith of the medical practitioner who refuses to take part in the termination of a human life is always presumed. In a democracy, freedom of conscience and good faith should always be presumed; moral coercion should never become the rule.

12. The right to conscientious objection is a symbol of freedom against totalitarian States

Conscientious objection is a symbol of freedom; it is also a testimony of the supremacy of the straight conscience over unjust positive laws. The right of conscience is protected not simply because a political faction has supremely chosen to protect it (and thus, potentially can be changed when political power changes hands), but rather, conscience is protected precisely because it is a fundamental right which should be recognized as such. Despite the governmental need for law to govern excesses and deficiencies of people’s conduct, “there is

a limit to what the law can and should expect of those whom it is designed to serve.”³⁵ This principle has even more force in western democracies in which the citizenry is supposed to be the master rather than the servant.³⁶

As Robert Araujo underlines, “*The state does not confer the right of conscience; its source is not the state. Its source is in human nature that is given by the Creator. For those who make no claim to and even deny belief in theism, it is important to recall the inexorable truth that the state did not create us; it is neither our author nor final master.*”³⁷ A singular reliance on positive law, unchecked by the application of right reason, leads to positivism, and, this raises the concern addressed by Professor Hart in his discussion of the Nazi regime and post-war Germany where he stated, “[w]icked men enact wicked rules which others will enforce.”³⁸

As an answer to the legal, medical experimentation carried out by the Nazis, the Nuremberg Principles have clearly reaffirmed the supremacy of the straight conscience over positive laws, and the legal duty of the medical practitioner to comply with his conscience. Nuremberg 4th principle provides that:

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

This Principle proclaims the moral and legal duty to conscientiously object to demands and orders, even if they are legal, so long as they are unjust.

13. Ms McCafferty’s Report violates the principle of subsidiarity

By wrongly presuming the existence of a right to abortion or to euthanasia, Ms McCafferty Report violates the principle of subsidiarity. The right to life, and determination of when life begins in particular, are issues that the European Court of Human Rights has deemed outside the province of the Council of Europe (and its organs) for the imposition of moral views upon the Member States. Even more so, a healthcare provider’s right to exercise an objection of conscience is integrally connected to the sensitive area of the right to life, and it thus falls outside the Council of Europe’s jurisdiction. The interpretation of the Convention with regard to “right to life” matters stems from the intimate level of moral details involved in defining life. Such measures are to be enacted at the domestic level, as the Court explained in *VO v. France*.³⁹

The law has never and cannot create an alleged “right” to abortion or euthanasia because such practices are inherently a waiver of the right to life, and not a right in itself. Only the right to life is recognized by the Convention, however incompletely it may be guaranteed. Only in

³⁵ Robert Araujo, *Conscience Protection and the Holy See*, 1 Ave Maria Int’l. L. J. 1, 10 (Spring 2009), available at

<http://www.avemarialaw.edu/assets/documents/InternationalLR/AraujoConscienceProtectionandtheHolySee.pdf> (last accessed 18 June 2010) (footnote omitted) (emphasis added).

³⁶ *Id.*

³⁷ *Id.* at 14.

³⁸ *Id.* at 35 (quoting H.L.A. Hart, *The Concept of Law* 206 (The Legal Classics Library 1990) (1961)) (alteration in original).

³⁹ *Vo v. France* [GC], no. 53924/00, § 82, ECHR 2004-VIII.

exceptional cases, under its margin of appreciation, may a State reduce the degree of protection guaranteed to human life. But this reduction of the degree of protection cannot be made at the expense of the fundamental rights of others, such as the medical practitioners.

The case for imposing a so-called right to abortion or euthanasia through the Convention is nonexistent. The exclusion of the unborn or of the elderly persons from the right to life cannot be implied from the Convention. On this point, the European Court has repeatedly held that the criminal prohibition of abortion or euthanasia is perfectly consistent with the Convention. Time and again, as in the cases, *Jean-Jacques AMY v. Belgique (1998)*⁴⁰ and *Maria do Céu SILVA MONTEIRO MARTINS RIBEIRO v. Portugal (2004)*⁴¹ (addressing conduct of a Belgian doctor and a nurse in Portugal, respectively, who illegally performed abortions) the Court has ruled that a State may severely condemn those who abort or provide abortion despite penal provisions. Therefore, there is no right to abortion guaranteed by the Convention. More recently, in *TYSIAC v. Poland*⁴², the Court has also validated the substance of the Polish restrictive abortion laws,⁴³ whereas in the *PRETTY v. The United Kingdom* case⁴⁴, the Court affirmed that there is no right to euthanasia under the Convention.

Again, the issue of the right to life belongs to national States.

The ECLJ warns again the members of the PACE that this Report gravely endangers the freedom of conscience. The facilitation of the access to abortion that this Report seeks to provide cannot justify hurting, damaging and undermining the very core principle of “freedom of conscience”.

For all the reasons described above, the draft Resolution and Recommendation of Ms McCafferty must be rejected.

⁴⁰ E.Com.H.R., 5 Octobre 1988, *Jean-Jacques AMY contre Belgique*, Application n° 11684/85.

⁴¹ ECHR, 26/10/2004, *Maria do Céu SILVA MONTEIRO MARTINS RIBEIRO v. Portugal*, Application no. 16471/02.

⁴² *Tysiac v. Poland*, Application No. 5410/03, ECHR, 20 March 2007.

⁴³ *Id.* § 124.

⁴⁴ *Pretty v. The United Kingdom*, no. 2346/02, ECHR 2002-III.

APPENDIX—A

Below, we provide descriptions of two bodies, the International Federation of Gynecology and Obstetrics and the World Health Organization, which provide, *inter alia*, ethical guidance regulations for medical professionals which pertain to a medical professional's right to conscientiously object to performing abortions. Additionally, we also provide a description for each Member State as to the current status of the law pertaining to conscientious objection for medical professionals. Please note that the list below may not be an exhaustive list; the laws mentioned herein are listed as they were available.

International Federation of Gynecology and Obstetrics

The International Federation of Gynecology and Obstetrics (“FIGO”) “is a benevolent, non-profit organisation funded through subscriptions received from member societies, grants and the proceeds of its triennial World Congress.”⁴⁵ FIGO is composed of 124 member societies,⁴⁶ including most of the Council of Europe Member States.⁴⁷ Article 3 of the FIGO Constitution requires each member society to make a declaration of intention to abide by the constitution of FIGO.⁴⁸ Most of the constitutional provisions are merely procedural.⁴⁹ However, FIGO does provide substantive guidance to its members through committees, which are established under Section G of the constitution.⁵⁰ If necessary, FIGO officers can decide to revoke a society's membership with the appropriate procedures under Article 4 of the constitution.⁵¹

In 1985 FIGO established its Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health.⁵² This committee “considers the ethical aspects of issues that impact the discipline of Obstetrics, Gynecology and Women's Health.”⁵³ The committee uses the information gathered through research and discussion to create guidelines for handling the ethical aspects of women's health.⁵⁴ These guidelines are published in the “Recommendations on Ethical Issues in Obstetrics and Gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction.”⁵⁵ Below are relevant portions of the guidance provided:

⁴⁵ Int'l Fed. of Gynecology and Obstetrics, About FIGO, <http://www.figo.org/about> (last visited Nov. 20, 2009).

⁴⁶ *Id.*

⁴⁷ Int'l Fed. of Gynecology & Obstetrics, Member Associations, <http://www.figo.org/members> (last visited Nov. 20, 2009) [hereinafter FIGO Members].

⁴⁸ Int'l Fed. of Gynecology & Obstetrics, Constitution & Bye-Laws (Oct. 2009), *available at* <http://www.figo.org/files/figo-corp/Constitution%202009-2012%20-%20English.pdf>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Int'l Fed. of Gynecology & Obstetrics, Ethics Guidelines, <http://www.figo.org/about/guidelines> (last visited Nov. 20, 2009).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Int'l Fed. of Gynecology & Obstetrics, Recommendations on Ethical Issues In Obstetrics and Gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction (Oct. 2009), *available at* <http://www.figo.org/files/figo-corp/Ethical%20Issues%20-%20English.pdf>.

1. The primary conscientious duty of obstetrician-gynecologists (hereafter “practitioners”) is at all times to treat, or provide benefit and prevent harm to, the patients for whose care they are responsible. Any conscientious objection to treating a patient is secondary to this primary duty.
2. Provision of benefit and prevention of harm require that practitioners provide such patients with timely access to medical services, including giving information about the medically indicated options of procedures for their care and of any such procedures in which their practitioners object to participate on grounds of conscience.
3. Practitioners have a professional duty to abide by scientifically and professionally determined definitions of reproductive health services, and to exercise care and integrity not to misrepresent or mischaracterise them on the basis of personal beliefs.
4. Practitioners have a right to respect for their conscientious convictions in respect both of undertaking and not undertaking the delivery of lawful procedures, and not to suffer discrimination on the basis of their convictions.
5. Practitioners’ right to respect for their choices in the medical procedures in which they participate requires that they respect patients’ choices within the medically indicated options for their care.
6. Patients are entitled to be referred in good faith, for procedures medically indicated for their care that their practitioners object to undertaking, to practitioners who do not object. Referral for services does not constitute participation in any procedures agreed upon between patients and the practitioners to whom they are referred.
7. Practitioners must provide timely care to their patients when referral to other practitioners is not possible and delay would jeopardize patients’ health and well-being, such as by patients experiencing unwanted pregnancy (see the FIGO Definition of Pregnancy, Recommendations on Ethical Issues in Obstetrics and Gynecology, November 2003, page 43, that pregnancy “commences with the implantation of the conceptus in a woman”).
8. In emergency situations, to preserve life or physical or mental health, practitioners must provide the medically indicated care of their patients’ choice regardless of the practitioners’ personal objections.⁵⁶

World Health Organization

The World Health Organization (“WHO”) was “established in 1948 as the specialized agency of the United Nations responsible for directing and coordinating authority for international health matters and public health.”⁵⁷ Virtually all of the Member States of the Council of Europe are members of the WHO.⁵⁸ WHO’s regional office in Europe provides guidelines for its European Member States concerning abortion practices.⁵⁹ Its guidelines for “safe abortion” are established to ensure that “in circumstances where abortion is not against the law, health systems should train and equip health-service providers and should take other measures to ensure that such abortion is safe

⁵⁶ *Id.* at 26-27.

⁵⁷ WHO Europe, *The Work of WHO in the European Region*, 2006, 2007, preface, WA 540 (Doc. No.) <http://www.euro.who.int/Document/E91482.pdf>.

⁵⁸ World Health Organization Regional Office for Europe, Member States, <http://www.euro.who.int/AboutWHO/About/MH> (last visited Nov. 21, 2009).

⁵⁹ World Health Organization Regional Office for Europe, *Guidelines*, http://www.euro.who.int/reproductivehealth/guidelines/20021015_1 (last visited Nov. 21, 2009).

and accessible.”⁶⁰ These guidelines are established for all of the European countries and include the appropriate standards for conscientious objection as follows⁶¹:

Health workers have a right to conscientious objection to providing abortion, but they have an ethical obligation to follow professional ethical codes, which usually require health professionals to refer women to skilled colleagues who are not, in principle, opposed to termination of pregnancy allowed by law. If no alternative provider is available, the health worker must provide abortion to save the woman’s life or to prevent permanent damage to her health in accordance with national law. When a hospital, clinic or health centre has been designated as a public facility offering services allowed by law, it cannot endanger women’s lives or health by refusing services. It should provide abortion services on the grounds allowed by the law.⁶²

Conscientious Objection Laws in the Council of Europe Member States

1. Albania

The Constitution of the Republic of Albania states: “Freedom of conscience and religion is guaranteed.”⁶³ Albania’s interruption of pregnancy law, states that, “[n]o physician can be imposed to perform abortion against his will.”⁶⁴

The *Albanian Association of Obstetrics and Gynecology* is a member of the FIGO.⁶⁵

2. Andorra

In Andorra, abortion is generally prohibited,⁶⁶ except in to save the life of the mother.⁶⁷ Andorra is a member of the World Health Organization.

3. Armenia

The Constitution of Armenia provides:

Everyone shall have the right to freedom of thought, conscience and religion. This right includes freedom to change the religion or belief and freedom to, either alone or in community with others manifest the religion or belief, through preaching, church ceremonies and other religious rites.

The exercise of this right may be restricted only by law in the interests of the public security, health, morality or the protection of rights and freedoms of others.⁶⁸

⁶⁰ World Health Organization Geneva, *Safe Abortion: Technical and Policy Guidance for Health Systems*, 2003, at 7, <http://whqlibdoc.who.int/publications/2003/9241590343.pdf>.

⁶¹ *Id.* at 66.

⁶² *Id.*

⁶³ The Republic of Albania 1998 Constitution, art. 24(1), *available at* http://www.osce.org/documents/pia/1998/11/4321_en.pdf.

⁶⁴ Fletorja Zyrtare[Penal Code] No. 26/1995, art. 16-17 (Albania), *available at* <http://www.hsph.harvard.edu/population/abortion/ALBANIA.abo.htm>.

⁶⁵ FIGO Members, *supra* note 47.

⁶⁶ Butlletí Oficial del Principat d'Andorra, Vol. 2, [Penal Code] No. 21, 21 July /1990, art. 185-188 (Andorra), *available at* <http://www.hsph.harvard.edu/population/abortion/ANDORRA.abo.htm>.

⁶⁷ 1 U.N. ESCOR, Population Div., *Abortion Policies: A Global Review*, at 24, U.N. Doc. ST/ESA/SER.A/187, U.N. Sales No. E.01.XIII.10 (2002) [hereinafter “Abortion Policies”], *available at* <http://www.un.org/esa/population/publications/abortion/profiles.htm>.

Republic of Armenia Association of Obstetricians/Gynecologists and Neonatologists is a member of FIGO.⁶⁹

4. Austria

According to the Austrian Penal Code:

No physician is obliged to perform an abortion or to take part in it, except where it is necessary ("notwendig") without delay to save the life of the pregnant woman from an immediately threatening danger which cannot otherwise be averted. This applies also to persons in para-medical, medico-technical, or auxiliary health employments.⁷⁰

No one may be discriminated against for either performing an abortion, or refusing to participate in an abortion.⁷¹ The Reproductive Medicine Act of 1992 provides that "no physician, nurse or paramedic is under a duty to perform or assist in a medically assisted fertilization and he or she must not be discriminated against for carrying out such fertilization or for refusing to take part in it."⁷²

Oesterreichische Gesellschaft für Gynäkologie und Geburtshilfe (Austrian Society of Gynaecology and Obstetrics) is a member of FIGO.⁷³

5. Azerbaijan

Azerbaijan is a member of the World Health Organization.

6. Belgium

Under the Law of 3 April 1990, "no medical doctor, nor any nurse or aid to the doctor, will be obliged to take part in [an] abortion."⁷⁴ In addition, the "[l]aw imposes on the medical doctor to inform the woman seeking an abortion of his or her refusal to perform abortion for reasons of conscience, at the *first* visit of the patient."⁷⁵

Koninklijke Belgische Vereniging voor Gynecologie en Verloskunde/Société Royale Belge de Gynécologie et d'Obstétrique is a member of FIGO.⁷⁶

7. Bosnia and Herzegovina

Bosnia and Herzegovina is a member of the World Health Organization.

⁶⁸ The Republic of Armenia, Const. art. 26, *available at* <http://www.legislationline.org/documents/action/popup/id/8782/preview>.

⁶⁹ FIGO Members, *supra* note 47.

⁷⁰ Strafgesetzbuch [StGB] [Penal Code] No. 60/1974, art. 97(2)(3) (Austria), *available at* <http://www.hsph.harvard.edu/population/abortion/Austria.abo.htm>.

⁷¹ *Id.* art. 97(3).

⁷² Fortpflanzungs Medizingesetz, [Reproductive Medicine Act 1992] BGB1. No. 275/1992, as amended, § 6 (Austria), *available at* <http://www.consciencelaws.org/Conscience-Laws-Austria/LawAustria.html>.

⁷³ FIGO Members, *supra* note 47.

⁷⁴ E.U. Network of Indep. Experts on Fundamental Rights, *Opinion No. 4-2005: The Right To Conscientious Objection and the Conclusion by EU Member States of Concordats with The Holy See* [hereinafter "E.U. Network of Indep. Experts on Fundamental Rights"], at 9 (14 Dec. 2005) (citing Art. 348, al. 2, 6° Belgian Penal Code), *available at* http://ec.europa.eu/justice_home/cfr_cdf/doc/avis/2005_4_en.pdf; *see also* Protection of Conscience Project, Protection of Conscience Laws, Belgium, *available at* <http://www.consciencelaws.org/Conscience-Laws-Belgium/LawBelgium.html>.

⁷⁵ *Id.* (footnote omitted) (emphasis added).

⁷⁶ FIGO Members, *supra* note 47.

8. Bulgaria

The Bulgarian Society of Obstetrics and Gynecology is a member of FIGO.⁷⁷

9. Croatia

The Croatian Constitution provides that, “[n]ot even in the case of an immediate threat to the existence of the State may restrictions be imposed on the application of the provisions of this Constitution concerning the right to life . . . or on freedom of thought, conscience and religion.”⁷⁸ The “[f]reedom of conscience and religion and freedom to manifest religion and other convictions shall be guaranteed.”⁷⁹

Croatian Society of Gynecologists and Obstetricians is a member of FIGO.⁸⁰

10. Cyprus

“In Cyprus, the Medical Profession is regulated by the *Regulations of Conduct of Doctors* that were issued under the *Doctors (Council, Discipline and Pension Fund) Law* of 1967 and 1970.⁸¹ According to Article 8 of the Regulations, a doctor may refuse medical treatment to a patient except in cases of emergency or humanitarian duty; this general provision may be relied upon, in principle, where the motivations for refusing to provide a medical service is religious or ideological.”⁸²

Pancyprian Obstetrics and Gynaecology Society is a member of FIGO.⁸³

11. Czech Republic

In the Czech Republic, abortion is permitted to save the life of the woman, to preserve physical health, to preserve mental health, in the case of rape or incest, in the case of fetal impairment, or for economic or social reasons.⁸⁴ Abortion is also available on request.⁸⁵ Obtaining an abortion requires only the woman’s consent and authorization of the gynecologist.⁸⁶ Where “gestation is more than 12 weeks, the abortion requires authorization by a medical commission.”⁸⁷ Generally, an abortion “must be performed within the first trimester, in a hospital, by a licensed gynecologist. Therapeutic abortion is permitted up to 26 weeks.”⁸⁸ Czech abortion legislation, Law 63 and 77 (October 23, 1986) became effective in January 1987.⁸⁹

Czech Gynecological and Obstetrical Society is a member of FIGO.⁹⁰

⁷⁷ FIGO Members, *supra* note 47.

⁷⁸ The Republic of Croatia Const. art. 17, *available at*

<http://www.legislationline.org/download/action/download/id/1583/file/cba4cce79cf00bbcd828617daaaa.htm/preview>.

⁷⁹ *Id.* art. 40.

⁸⁰ FIGO Members, *supra* note 47.

⁸¹ E.U. Network of Indep. Experts of Fundamental Rights, *supra* note 74, at 10.

⁸² Regulations of Conduct of Doctors, Art. 8 Doctors (Council, Discipline and Pension Fund) Law of 1967 & 1970); *see also* Protection of Conscience Project, Protection of Conscience Laws, Cyprus, *available at* <http://www.consciencelaws.org/Conscience-Laws-Cyprus/LawCyprus.html>.

⁸³ FIGO Members, *supra* note 47.

⁸⁴ Abortion Policies, *supra* note 67, at 117.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 118.

⁸⁸ *Id.*

⁸⁹ European Centre for Law and Justice, *Comparative Abortion Laws in the European Union*, at 4, July 9, 2004 (citing Enactment of the Czech Ministry of Health, No 11, 1993), *available at* <http://www.eclj.org/PDF/prolife.pdf>.

⁹⁰ FIGO Members, *supra* note 47.

12. Denmark

Physicians, nurses, midwives, health care workers, as well as people training in such fields, must request permission in order for them to “be absolved from carrying out or participating in termination of pregnancy if it is contrary to their ethical or religious views.”⁹¹ However, physicians have “a legal obligation to refer the woman seeking an abortion to another colleague.”⁹²

Dansk Selskab for Obstetric og Gynaekologi - Department of Obstetrics and Gynaecology Society is a member of FIGO.⁹³

13. Estonia

In Estonia, abortion is permitted to save the life of the woman, to preserve physical health, to preserve mental health, in the case of rape or incest, in the case of fetal impairment, for economic or social reasons, and is also available on request.⁹⁴ Obtaining an abortion requires only the woman’s consent and must take place in a hospital, administered by a physician.⁹⁵ An abortion is available on request through the twelfth week of pregnancy.⁹⁶ Thereafter, a pregnant woman must undergo a consultation with doctors.⁹⁷

Since 1955, abortion has been legal in Estonia (first made legal under Soviet Union abortion law).⁹⁸

In 1993, new abortion criteria as well as regulations governing performance of the abortion procedure in private health centers was implemented by decree of the Estonian Ministry of Social Affairs.⁹⁹ In June of 1993, the Estonian Abortion Register made it mandatory that all institutions performing the abortion procedure fill out the appropriate register forms.¹⁰⁰

Society of Estonian Gynaecologists is a member of FIGO.¹⁰¹

14. Finland

In Finland there is no statutory exemption for conscientious objectors. The Finland interruption of pregnancy law states that a “physician with authority to render an opinion and the operating physician shall not be entitled, without reason, to refuse to consider a request for termination of pregnancy.”¹⁰²

Finnish Gynecological Association is a member of FIGO.¹⁰³

15. France

“Art. L.2212-8 of the Code of Public Health . . . allows medical physicians to invoke a ‘conscience clause’ on the basis of which they may refuse to perform an abortion. However, they are obliged to inform the woman seeking abortion without delay of their intention to invoke the clause. Although

⁹¹ Denmark, Law No. 350/1973, as amended Law No. 389/1995 (Denmark), available at <http://www.hsph.harvard.edu/population/abortion/DENMARK.abo.htm>.

⁹² Peter Saunders, *Abortion and Conscientious Objection*, Nucleus, Jan. 1996, at 9.

⁹³ FIGO Members, *supra* note 47.

⁹⁴ Abortion Policies, *supra* note 67, at 142.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Comparative Abortion Laws in the European Union*, *supra* note 89, at 5.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ FIGO Members, *supra* note 47.

¹⁰² Finland, Law No. 239 of 24 March 1970 on the interruption of pregnancy, as amended through Law No. 572 of 24 July 1998 (6)(3), available at <http://www.hsph.harvard.edu/population/abortion/Finland.abo.htm>.

¹⁰³ FIGO Members, *supra* note 47.

this clause also may be invoked by health care practitioners employed in institutions, the heads of services in public health care institutions and those which take part in the provision of public health care services may not invoke the clause in order to oppose the performance of abortions within their service”¹⁰⁴

Collège National des Gynécologues et Obstétriciens Français is a member of FIGO.¹⁰⁵

16. Georgia

In Georgia, abortion is permitted in certain circumstances: to save the life of the woman; to preserve physical health; to preserve mental health; in the case of rape or incest; in the case of fetal impairment; for economic or social reasons; and it is also available on request.¹⁰⁶

Obtaining an abortion requires only the consent of the woman and is considered authorized if “performed by a licensed physician, in a hospital or other recognized medical institution.”¹⁰⁷ During the first three months (or 12 weeks) of pregnancy, an abortion may be obtained on request.¹⁰⁸ Subsequently, an induced abortion “is available within 28 weeks from conception on judicial, genetic, vital, broad medical and social grounds, as well as for personal reasons if authorized by a commission of local physicians.”¹⁰⁹

The *Georgian Obstetrics & Gynecologist Association (GOGA)* is a member of FIGO.¹¹⁰

17. Germany

The Constitution of Germany guarantees the freedom of conscience unconditionally.¹¹¹ “Freedom[s] of faith and of conscience, and freedom of creed religious or ideological, are inviolable.”¹¹² “Freedom of conscience is a norm of fundamental value and of high constitutional status, which is to be respected in the framework of every activity of State authorities. This is a continuous jurisprudence of the Federal Constitutional Court and of the Federal Administrative Court.”¹¹³

The *Deutsche Gesellschaft für Gynäkologie und Geurtshilfe* is a member of FIGO.¹¹⁴

18. Greece

The *Hellenic Obstetrical and Gynaecological Society* is a member of FIGO.¹¹⁵

19. Hungary

“In Hungary, the Constitutional Court delivered a judgment in 1991 which concerns the duties of medical physicians in relation to legally permitted abortion (judgment 64/1991, (XII.17.) AB határozat). The Court recognized that medical practitioners have a right to religious conscientious

¹⁰⁴ E.U. Network of Indep. Experts of Fundamental Rights, *supra* note 74, at 11, (citing Code of Public Health, Article L.2212-8); *see also* Protection of Conscience Project, Protection of Conscience Laws, France, *available at* <http://www.consciencelaws.org/Conscience-Laws-France/LawFrance.html>).

¹⁰⁵ FIGO Members, *supra* note 47.

¹⁰⁶ 2 Abortion Policies, *supra* note 67, at 213, U.N. Doc. ST/ESA/SER.A/191, U.N. Sales No. E.01.XIII.18.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ FIGO Members, *supra* note 47.

¹¹¹ Germany Const., Grundgesetz, art. 4, para. 1, *available at* <http://www.consciencelaws.org/Conscience-Laws-Germany/LawGermany.html>.

¹¹² *Id.*

¹¹³ E.U. Network of Indep. Experts of Fundamental Rights, *supra* note 74, at 11 (second alteration in original) (citing Federal Admin. Court, judgment of 18 June 1997, BVerwGE 105, 73 <77, 78>).

¹¹⁴ FIGO Members, *supra* note 47.

¹¹⁵ FIGO Members, *supra* note 47.

objection; however it considered that certain restrictions to the freedom of religion which this right is derived from may be allowed unless they are unreasonable. Specifically, the Court considered that in any employment relationship, the employee may not object to the performance of duties which form a substantive part of the profession. It considered that only non-therapeutic abortions – i.e., not medically prescribed – could be considered as not part of the normal activities of a gynaecologist.”¹¹⁶

The *Hungarian Society of Obstetrics and Gynaecology* is a member of FIGO.¹¹⁷

20. Iceland

The *Icelandic Society of Obstetrics and Gynecology* is a member of FIGO.¹¹⁸

21. Ireland

A person with a conscientious objection is not obliged to take part “in the provision of a family planning service, the giving of prescriptions or authorisations for the purpose of [The Health (Family Planning) Act 1979] or the sale, importation into the State, manufacture, advertising or display of contraceptives.”¹¹⁹ The Constitution of Ireland recognizes the right to life for the unborn. “The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.”¹²⁰

The *Institute of Obstetricians and Gynaecologists of the Royal College of Physicians of Ireland* is a member of FIGO.¹²¹

22. Italy

Italy regulates conscientious objections by healthcare workers in certain medical practices in performance of both voluntary abortions¹²² and medically assisted conception.¹²³ Voluntary abortions may only be performed at public clinics and legally certified clinics, and those health care workers have a right to exemption, based upon conscientious objection, from actual termination of a pregnancy, but they must provide care prior to and following the abortion.¹²⁴ Healthcare workers must declare in advance that they object to participating in abortions or assisted conception.¹²⁵ “Such declaration must be forwarded to the provincial medical officer and, in the case of personnel on the staff of the hospital or the nursing home, to the medical director.”¹²⁶ These declarations must be made within one month “following the entry into force of this Law, or the date of qualification,

¹¹⁶ E.U. Network of Indep. Experts of Fundamental Rights, *supra* note 74, at 12.

¹¹⁷ FIGO Members, *supra* note 47.

¹¹⁸ FIGO Members, *supra* note 47.

¹¹⁹ Health Family Planning Act 1979, Clause 11, *available at* <http://www.consciencelaws.org/Conscience-Laws-Ireland/Conscience-Laws-Ireland.html>.

¹²⁰ Ireland Const. art. 40(3)(3^o) *available at*

[http://www.taoiseach.gov.ie/attached_files/html%20files/Constitution%20of%20Ireland%20\(Eng\).htm](http://www.taoiseach.gov.ie/attached_files/html%20files/Constitution%20of%20Ireland%20(Eng).htm)

¹²¹ FIGO Members, *supra* note 47.

¹²² E.U. Network of Indep. Experts of Fundamental Rights, *supra* note 74, at 12, (citing Article 9 of law 194 of 22 May 1978); *see also* Protection of Conscience Project, Protection of Conscience Laws, Italy, *available at* <http://www.consciencelaws.org/Conscience-Laws-Italy/LawItaly.html>.

¹²³ E.U. Network of Indep. Experts of Fundamental Rights, *supra* note 74, at 12, (citing Article 16 of Law 40 of 19 Feb. 2004); *see also* Protection of Conscience Project, Protection of Conscience Laws, Italy, *available at* <http://www.consciencelaws.org/Conscience-Laws-Italy/LawItaly.html>.

¹²⁴ Law 194 of 22 May 1978, art. 9.

¹²⁵ Law 194 of 22 May 1978, art. 9.

¹²⁶ *Id.*

or the date of commencement of employment [where abortions occur],” or the date of the drawing up of insurance contracts covering abortion.¹²⁷

Hospitals and healthcare clinics must still ensure that the requested procedure is carried out under standardized procedures.¹²⁸ Implementation of these regulations is supervised regionally, and if necessary, a patient will be transferred to another institution.¹²⁹ Furthermore, no exemption is available if the conscientious objector’s assistance is “essential in order to save the life of a woman in imminent danger.”¹³⁰

The *Società Italiana di Ginecologia e Ostetricia* is a member of FIGO.¹³¹

23. Latvia

The *Latvian Association of Gynaecologists and Obstetricians* is a member of FIGO.¹³²

24. Liechtenstein

In Liechtenstein, performing an abortion is a criminal offense, whether the person performing the abortion is the mother or a physician.¹³³

25. Lithuania

Currently abortion practices are regulated by the Minister of Health, who issued an order defining the abortion procedures to be practiced in Lithuania.¹³⁴

The *Lithuanian Association of Obstetricians and Gynecologists* is a member of FIGO.¹³⁵

26. Luxembourg

Medical doctors cannot be forced to perform an abortion if doing so would violate their conscience.¹³⁶ However, physicians must perform an abortion if there is an “imminent threat to the mother’s life.”¹³⁷

The *Société Luxembourgeoise de Gynécologie et d’Obstétrique* is a member of FIGO.¹³⁸

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ FIGO Members, *supra* note 47.

¹³² FIGO Members, *supra* note 47.

¹³³ Liechtensteinisches Landesgesetzblatt [Penal Code], No. 37, 22 October 1988, art 96-98 (Liechtenstein), available at <http://www.hsph.harvard.edu/population/abortion/LIECHTENSTEIN.abo.htm>.

¹³⁴ Dėl nėštumo nutraukimo operacijos atlikimo tvarkos (Regulation on the Performance of Abortions) LR Sveikatos apsaugos ministerijos įstatymas (Decree of Ministry of Health), No. 50 (January 28, 1994), available at

http://translate.google.com/translate?hl=en&sl=lt&u=http://sena.sam.lt/lt/main/teisine_informacija/ministro_isakymai%3Fid%3D22784&ei=TgwLS9WgGsuBnQfckfTKCw&sa=X&oi=translate&ct=result&resnum=1&ved=0CAwQ7gEwAA&prev=/search%3Fq%3DD%25C4%25971%2Bn%25C4%2597%25C5%25A1tumo%2Bnutraukimo%2Boperacijos%2Batlikimo%2Btvarkos%26hl%3Den.

¹³⁵ FIGO Members, *supra* note 47.

¹³⁶ Luxembourg, Law of 15 November 1978 Penal Code Act 353-1, available at <http://www.hsph.harvard.edu/population/abortion/LUXEMBOURG.abo.htm>.

¹³⁷ *Id.*

¹³⁸ FIGO Members, *supra* note 47.

27. Malta

Performing an abortion or assisting another perform an abortion is a criminal act in Malta.¹³⁹ Malta's criminal code protects the life of the unborn, prohibiting physicians from inducing a miscarriage.¹⁴⁰

The *Malta College of Obstetricians and Gynaecologists* is a member of FIGO.¹⁴¹

28. Moldova

The *Society of Obstetricians and Gynecologists of Republic of Moldova* is a member of FIGO.¹⁴²

29. Monaco

Abortion is illegal in Monaco with the criminal law principle of necessity interpreted to permit abortion to save the life of the mother.¹⁴³

Monaco has one of the most restrictive abortion laws in Europe. Under the Criminal Code (Law No. 829 of 28 September 1967), there are no stated exceptions to a general prohibition of abortion. Nonetheless, under general criminal law principles of necessity, an abortion can be performed to save the life of a pregnant woman.¹⁴⁴

In 2009, Monaco passed a law that will permit abortion in the future in cases of rape or fetal deformity.¹⁴⁵

30. Montenegro

The *Association of Gynecologists and Obstetricians of Serbia, Montenegro and Republic Srpska* (UGOSCGRS) is a member of FIGO.¹⁴⁶

31. The Netherlands

The Netherlands recognizes the right to religious conscientious objection in specific areas of legislation.¹⁴⁷ When the physician has a conscientious objection to performing the treatment or referring the patient to another physician who would perform the operations, he must notify the patient immediately after she has consulted him.¹⁴⁸ The physician who conscientiously objects, must however, divulge the woman's condition and medical documents to another physician if the patient consents to the transfer of the information.¹⁴⁹

The *Dutch Society of Obstetrics and Gynaecology* is a member of FIGO.¹⁵⁰

¹³⁹ Malta Crim. Code § 241-243A (2003), *available at* <http://www.hsph.harvard.edu/population/abortion/MALTA.abo.htm>.

¹⁴⁰ *Id.*

¹⁴¹ FIGO Members, *supra* note 47.

¹⁴² FIGO Members, *supra* note 47.

¹⁴³ 2 Abortion Policies, *supra* note 67, at 141, U.N. Doc. ST/ESA/SER.A/191, U.N. Sales No. E.01.XIII.18.

¹⁴⁴ *Id.* at 142.

¹⁴⁵ Matthew C. Hoffman, Catholic Monaco Legalizes Abortion, LIFE SITE NEWS, Apr. 8, 2009, <http://www.lifesitenews.com/ldn/2009/apr/09040810.html>.

¹⁴⁶ FIGO Members, *supra* note 47.

¹⁴⁷ Netherlands, Law on the Termination of Pregnancy of 1 May 1981§ 20(1), *available at* <http://www.hsph.harvard.edu/population/abortion/NETHERLANDS.abo.htm>.

¹⁴⁸ *Id.* at § 20(2).

¹⁴⁹ *Id.* at § 20(3).

¹⁵⁰ FIGO Members, *supra* note 47.

32 Norway

Under Norwegian law, doctors are not legally required to perform abortions, but must participate in pre-operative care.¹⁵¹

The *Norsk Gynekologisk Forening* (Norwegian Society for Gynecology and Obstetrics) is a member of FIGO.¹⁵²

33. Poland

Article 53 of the Polish Constitution provides that “the freedom of conscience and religion shall be assured to everyone.”¹⁵³ The Polish Code of Medical Ethics, Article 4, states that physicians are free to carry out their professional duties in accordance with their own consciences and contemporary medical practices.¹⁵⁴

Article 35 of the 5 December 1996 Act of the Medical and Dentist Profession provides:

The doctor may refrain from implementing health care benefits that are incompatible with his conscience, subject to Article 30 of the obligation to indicate that there is real opportunity to obtain the benefits with another doctor or in another plant health care and justified and should be noted that fact in medical records. The doctor when exercising their profession on the basis of work or in the service is also an obligation for prior notification in writing superior.¹⁵⁵

Poland grants to the unborn all of the rights and privileges of born children. “A conceived child shall likewise enjoy legal capacity; it shall acquire the same rights and duties as regards succession insofar as it is born alive.”¹⁵⁶

The *Polish Gynaecological Society* (Polskie Towarzystwo Ginekologiczne) is a member of FIGO.¹⁵⁷

34. Portugal

Portugal’s Constitution provides medical professionals with a right to refuse to perform an abortion based upon religious or philosophical beliefs.¹⁵⁸ Article 41(6) of the Constitution explicitly provides a right to “conscientious objection as in accordance with the law.”¹⁵⁹ Further, under Article 12 of Law No. 16/2001 (Law of Religious Freedom), one may “object to the compliance of laws that contradict the imperative commands of one’s own conscience, *within the limits of the rights and duties imposed by the Constitution and under the terms of the law that may regulate the*

¹⁵¹ Norway, LOV 1975-06-13 nr 50: Law on abortion § 14, *available at* http://translate.googleusercontent.com/translate_c?hl=en&sl=no&tl=en&u=http://www.lovdato.no/all/hl-19750613-050.html&rurl=translate.google.com&usg=ALkJrhjS1SAhLFvqLRx4-L18G67OZqzZA, *see also* Saunders, *supra* note 92, at 9.

¹⁵² FIGO Members, *supra* note 47.

¹⁵³ Poland Const. art. 53, *available at* <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

¹⁵⁴ Poland Code of Medical Ethics, art. 4., *available at* http://www.nil.org.pl/xml/nil/wladze/str_zl/zjazd7/kel.

¹⁵⁵ 5 December 1996 Act on the Medical and Dentist Profession, art. 39 (OJ of 1997, no. 28, item 152 with amendments in 2005 and 2006), *available at* <http://translate.google.com/translate?hl=en&sl=pl&u=http://www.portalmed.pl/xml/prawo/medycyna/medycyna/podst/lekarz&ei=xWQIS8X7Bcz-nAeJ1fXICw&sa=X&oi=translate&ct=result&resnum=1&ved=0CAkQ7gEwAA&prev=/search%3Fq%3DUsta>

[wa%2Bo%2Bzawodzie%2Blekarza%2Bi%2Blekarza%2Bdentysty%2Bz%26hl%3Den](http://www.portalmed.pl/xml/prawo/medycyna/medycyna/podst/lekarz&ei=xWQIS8X7Bcz-nAeJ1fXICw&sa=X&oi=translate&ct=result&resnum=1&ved=0CAkQ7gEwAA&prev=/search%3Fq%3DUsta)

¹⁵⁶ Poland, Law of 7 Jan. 1993 (4)(2), *available at* http://www.hsph.harvard.edu/population/annual_review.htm abortion, Poland.

¹⁵⁷ FIGO Members, *supra* note 47.

¹⁵⁸ E.U. Network of Indep. Experts of Fundamental Rights, *supra* note 74, at 12, (citing Portuguese Constitution Art. 41(6)); *see also* Protection of Conscience Project, Protection of Conscience Laws, Portugal, *available at* <http://www.consciencelaws.org/Conscience-Laws-Portugal/LawPortugal.html>.

¹⁵⁹ *Id.*

exercise of the conscientious objection.”¹⁶⁰ Additionally, Section 2 of Law No. 16/2001 provides “[t]he commands of conscience that are considered imperative are those whose infringement involves a serious offence to one’s moral integrity and, consequently, make any other behavior as not mandatory.”¹⁶¹ Legislation passed in Portugal, provides medical professionals are not obliged to direct or collaborate in medically assisted procreation if the professional conscientiously objects.¹⁶² Healthcare workers, also have the right to conscientiously object.¹⁶³ When healthcare workers do not provide abortions due to their conscience objection or other obstacles, they are obliged to refer the woman to another practitioner who will perform the operation.¹⁶⁴ The *Sociedade Portuguesa de Obstetricia e Ginecologia* is a member of FIGO.¹⁶⁵

35. Romania

The Romanian Constitution provides, “[f]reedom of thought, opinion, and religious belief shall not be restricted in any form whatsoever.”¹⁶⁶ The Constitution further provides that although “[f]reedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.”¹⁶⁷

The *Romanian Society of Obstetric and Gynecology* is a member of FIGO.¹⁶⁸

36. Russian Federation

Russian Federal Law recognizes¹⁶⁹ and regulates individuals’ rights to freedom of conscience, faith, and religious associations.¹⁷⁰

The *Russian Society of Obstetricians and Gynaecologists* is a member of FIGO.¹⁷¹

37. San Marino

Abortion is illegal in San Marino with the criminal law principle of necessity interpreted to permit abortion to save the life of the mother.¹⁷² “Under Articles 153 and 154 of the Penal Code of San Marino, abortion is generally prohibited. . . . Nonetheless, under general criminal law principles of necessity, an abortion can be performed to save the life of the pregnant woman.”¹⁷³

¹⁶⁰ *Id.* (citing Art. 12, Law No. 16/2001(1)) (emphasis added); *see also* Protection of Conscience Project, Protection of Conscience Laws, Portugal, *available at* <http://www.consciencelaws.org/Conscience-Laws-Portugal/LawPortugal.html>.

¹⁶¹ *Id.*

¹⁶² Portugal. Law No. 32/2006 of 26 July 2006, chapt. 2 art. 11 on medically assisted procreation. (Diário da República, Part I, 26 July 2006, No. 143. pp. 5245-5250), *available only in Portuguese at* <http://www.dre.pt/pdfgratis/2006/07/14300.pdf>.

¹⁶³ Portugal Law 16/2007 [Penal Code] § 42(6), *available at* <http://www.hsph.harvard.edu/population/abortion/PORTUGAL.abo.htm>(available only in Portuguese.)

¹⁶⁴ *Id.*

¹⁶⁵ FIGO Members, *supra* note 47.

¹⁶⁶ The Republic of Romania Const. art. 29(1), *available at* <http://diasan.vsat.ro/legislatie/eng/vol65eng.pdf>.

¹⁶⁷ *Id.* at art. 29(2).

¹⁶⁸ FIGO Members, *supra* note 47.

¹⁶⁹ Russian Federation, Federal Law, No. 125-FZ of September 26, 1997, art. 3(1), *available at* <http://www.legislationline.org/documents/action/popup/id/4187>.

¹⁷⁰ *Id.* art. 2(2).

¹⁷¹ FIGO Members, *supra* note 47.

¹⁷² 3 Abortion Policies, *supra* note 67, at 71, U.N. Doc. ST/ESA/SER.A/196, Sales No. E.02.XIII.5.

¹⁷³ *Id.* at 72.

38. Serbia

The Serbian Constitution provides “freedom of thought, conscience, beliefs and religion . . . as well as the right to stand by one’s belief or religion or change them by choice.”¹⁷⁴ However, these freedoms “may be restricted by law only if that is necessary in a democratic society to protect lives and health of people, morals of democratic society, freedoms and rights guaranteed by the Constitution, public safety and order, or to prevent inciting of religious, national, and racial hatred.”¹⁷⁵

The *Association of Gynecologists and Obstetricians of Serbia, Montenegro and Republic Srpska* (UGOSCGRS) is a member of FIGO.¹⁷⁶

39. Slovak Republic

On September 22, 2004, the National Council of the Slovak Republic passed an act regulating healthcare and related services. Under Section 12 of the Act, Legal Relations in Healthcare Provision, a healthcare provider may refuse to agree to perform certain procedures if the “provision [of the procedures] is prevented by personal belief of a medical worker, who is to provide the healthcare.”¹⁷⁷ The exemption from providing services due to “personal belief” only applies to “artificial abortion, sterilization and assisted reproduction.”¹⁷⁸ If medical treatment is refused because of personal beliefs, the proposed patient may seek to induce the “pertinent self-governing region doctor” to investigate to ensure that the denial of treatment was due in fact to the beliefs held by the provider.¹⁷⁹ “The decision of the self-governing region doctor is binding for the provider.”¹⁸⁰ The *Slovak Society of Gynecology and Obstetrics* is a member of FIGO.¹⁸¹

40. Slovenia

The Constitution of Slovenia states that the right of conscientious objection shall be permitted in such circumstances as are determined by statute, to the extent that the rights and freedoms of others are not affected.¹⁸² “Healthcare workers may not refuse to provide emergency medical assistance.”¹⁸³ Healthcare workers are required to report their conscientious objections to the healthcare institution.¹⁸⁴ The healthcare institution considers these objections, but “must ensure that patients’ healthcare rights are exercised without disruption.”¹⁸⁵ Healthcare workers may refuse to perform “a medical intervention if they believe that it is not in accordance with their conscience and with international rules of medical ethics.”¹⁸⁶

The Slovenian Code of Medical Deontology Practice provides “[p]hysicians may not refuse to provide emergency medical assistance appropriate to their professional capabilities, irrespective of

¹⁷⁴ Serbia Const. art. 43, available at <http://www.legislationline.org/documents/section/constitutions> (Serbia Const).

¹⁷⁵ *Id.*

¹⁷⁶ FIGO Members, *supra* note 47.

¹⁷⁷ Slovak, Act No. 576/2004 Coll. § 12(2)(c) (22 September 2004), available at http://www.privireal.org/content/rec/documents/Slovakia_ActNo576_Healthcare_2004.pdf.

¹⁷⁸ *Id.* at § 12(3).

¹⁷⁹ *Id.* at (4).

¹⁸⁰ *Id.*

¹⁸¹ FIGO Members, *supra* note 47.

¹⁸² Slovenia Const. art. 46, available at <http://www.consciencelaws.org/Conscience-Laws-Slovenia/Conscience-Laws-Slovenia-01.html>.

¹⁸³ Slovenia Health Services Act, art. 45, available at <http://www.consciencelaws.org/Conscience-Laws-Slovenia/Conscience-Laws-Slovenia-01.html>.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

whether it is their work duty and whether they have been expressly asked for assistance.”¹⁸⁷ Physicians are required to apply and respect the principles of freedom of choice of other physicians, healthcare institutions, and the rights of patients.¹⁸⁸ However, physicians are “obliged to reject any intervention that according to their professional convictions and conscience could be unethical or harmful to the patient.”¹⁸⁹ Physicians may not refuse to carry out an abortion or sterilization in the case of emergency medical assistance, but may refuse to perform the procedures in situations not involving an emergency, if the procedure is not “in accordance with the physician’s beliefs and conscience.”¹⁹⁰

The *Slovene Association of Gynaecologists and Obstetricians* is a member of FIGO.¹⁹¹

41. Spain

Spain provides extensive regulation for healthcare workers’ right of conscientious objection in the healthcare industry. Spain’s Constitution provides for the Freedom of Religion under Article 16.¹⁹² Although there is no specific provision for conscientious objection under the Organic Law 7/1980 on freedom of religion, Article 16 is “to be interpreted in accordance with international and European human rights treaties.”¹⁹³ Further, the Constitutional Court has interpreted Article 16 to permit health care practitioners to refuse to “perform certain operations which would violate their religious beliefs.”¹⁹⁴ However, the High Courts of the Communities have limited that right to conscientious objection when a patient’s right to access medical services is endangered.¹⁹⁵ Another court, the High Court of Castilla-La Mancha (11 June 1999) ruled that a gynaecologist must find a replacement to perform an operation to which he or she objects.¹⁹⁶

Additionally, various communities within Spain have adopted laws that recognize the right of pharmacologists to refuse to perform their duties based upon their religious beliefs, limited however, by a threat to the patient’s health.¹⁹⁷ The 2000 Statutes of the Professional Order of Pharmacologists in La Rioja, for example, provides further regulation, ensuring that a patient will receive assistance despite a conscientious objection.¹⁹⁸ In Valencia, medical professionals may conscientiously object to the ending of life support for a terminal patient.¹⁹⁹ The statute allows the patient’s medical request to be carried out without requiring the healthcare worker to be instrumental in executing the patient’s “living will.”²⁰⁰ In Cantabria, a pharmacist’s right to

¹⁸⁷ Slovenian Code of Medical Deontology Practice, art. 6, available at <http://www.consciencelaws.org/Conscience-Laws-Slovenia/Conscience-Laws-Slovenia-01.html>.

¹⁸⁸ *Id.* at art. 19.

¹⁸⁹ *Id.* at art. 14.

¹⁹⁰ *Id.* at art. 42.

¹⁹¹ FIGO Members, *supra* note 47.

¹⁹² E.U. Network of Indep. Experts of Fundamental Rights, *supra* note 74, at 13-14, (citing Spanish Constitution, art. 16); *see also* Protection of Conscience Project, Protection of Conscience Laws, Spain, *available at* <http://www.consciencelaws.org/Conscience-Laws-Spain/LawSpain.html>.

¹⁹³ *Id.*

¹⁹⁴ *Id.* (citing STC 53/1985, judgment of 26 August 1988).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Protection of Conscience Project, Protection of Conscience Laws, Spain, (citing STC 53/1985, judgment of 26 August 1988), *available at* www.consciencelaws.org/Conscience-Laws-Spain/LawSpain.html.

¹⁹⁸ Law 8/1998 (16 June, 1998) On Pharmacologists, Article 5(10) (Ley 8/1998, de 16 de junio, de ordenacion farmaceutica de la Comunidad Autonoma de La Rioja (BOLR de 20 de junio)), *available at* <http://www.consciencelaws.org/Conscience-Laws-Spain/LawSpain.html>.

¹⁹⁹ Law 1/2003 (28 January, 2003) on the Rights and Information of the Patient, Article 17(2) (Ley 1/2003, de 28 de enero, de la Generalitat, de Derechos e Informacion al Paciente de la Comunidad Valenciana (DOGV de 31 de enero)), *available at* Protection of Conscience Project, Protection of Conscience Laws, Spain, <http://www.consciencelaws.org/Conscience-Laws-Spain/LawSpain.html>.

²⁰⁰ *Id.*

conscientious objection is limited to situations where exercising conscientious objection does not threaten the rights of the patients.²⁰¹

The *Sociedad Española de Ginecología y Obstetricia* is a member of FIGO.²⁰²

42. Sweden

Swedish law does not provide for conscientious objection by physicians.²⁰³ Physicians as well as other healthcare workers have a contractual obligation to assist in the termination of pregnancy.²⁰⁴

The *Svensk Förening För Obstetrik & Gynecologi* (The Swedish Society of Obstetrics and Gynecology) is a member of FIGO.²⁰⁵

43. Switzerland

The Swiss Constitution guarantees the freedom of religion and philosophy and the freedom to profess their religious or philosophical convictions.²⁰⁶ However, fundamental rights may be limited if the limitations are justified by public interest, or serve for the protection of fundamental rights of other persons.²⁰⁷

The *Schweizerische Gesellschaft für Gynäkologie and Geburtshilfe/Société Suisse de Gynécologie & Obstétrique* is a member of FIGO.²⁰⁸

44. The former Yugoslav Republic of Macedonia

Healthcare workers may not invoke conscientious objection, even if the procedure violates their cultural or religious beliefs.²⁰⁹

The *Association of Gynecologists and Obstetricians of Macedonia* is a member of FIGO.²¹⁰

45. Turkey

Article 24 of the Constitution of Turkey provides everyone with the right “to freedom of conscience, religious belief and conviction.”²¹¹ These freedoms however are subject to Article 14, which states “[n]one of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights.”²¹²

²⁰¹ Law 8/1998 (16 June, 1998) On Pharmacologists, Article 5(10) (Ley 8/1998, de 16 de junio, de ordenacion farmaceutica de la Comunidad Autonoma de La Rioja (BOLR de 20 de junio)), *available at* Protection of Conscience Project, Protection of Conscience Laws, Spain, <http://www.consciencelaws.org/Conscience-Laws-Spain/LawSpain.html>.

²⁰² FIGO Members, *supra* note 47.

²⁰³ Saunders, *supra* note 92, at 9.

²⁰⁴ *Id.*

²⁰⁵ FIGO Members, *supra* note 47.

²⁰⁶ Switzerland Const., Bundesverfassung der Schweizerischen Eidgenossenschaft [BV] [18 April 1999, art. 15, ¶¶ 1,2 (Switz).

²⁰⁷ *Id.* art. 36.

²⁰⁸ FIGO Members, *supra* note 47.

²⁰⁹ Law on Termination of Pregnancy June 1972, Amended May 1976 (Published in Official Journal of Socialist Republic of Macedonia).

²¹⁰ FIGO Members, *supra* note 47.

²¹¹ Turkey Const., art. 24, *available at*

<http://www.legislationline.org/download/action/download/id/1650/file/d24f120df114ba9003796ee0f617.htm>/pre view.

²¹² *Id.*, art. 14.

The *Turkish Society of Obstetrics and Gynecology* is a member of FIGO.²¹³

46. Ukraine

Article 35 of the Ukrainian Constitution provides that every “person has the right to freedom of conscience and religion.”²¹⁴ This right however can be limited by law, but only to protect the “public order, the health and morality of the population, or for the protection of the rights and freedoms of other individuals.”²¹⁵

The *Ukrainian Association of Obstetricians and Gynaecologists* is a member of FIGO.²¹⁶

47. United Kingdom

The United Kingdom recognizes the right to religious conscientious objection in the British Abortion Act of 1967 for doctors and nurses, limited by a requirement to provide emergency treatment when the life of the woman is threatened.²¹⁷ Other regulatory limits apply as well, requiring participation in other portions of treatment which are not part of the abortion, such as giving advice or “various participatory steps, including the signing of the certificate required from a medical practitioner before an abortion can occur.”²¹⁸ Moreover, there is governmental guidance regarding exemptions for ancillary staff involved in handling aborted children and provisions for medical students wishing to opt out of witnessing abortions.²¹⁹ The British Medical Association also “expects” doctors to refer patients to another willing doctor where there is a conscientious objection to providing contraception.²²⁰ A person may assert a conscientious objection to participating in any activity governed by the Human Fertilisation and Embryology Act of 1990.²²¹ The *Royal College of Obstetricians and Gynaecologists (UK)* is a member of FIGO.²²²

²¹³ FIGO Members, *supra* note 47.

²¹⁴ Ukraine Const., art. 35, available at <http://www.brama.com/ua-gov/conste.html#r2>.

²¹⁵ *Id.*

²¹⁶ FIGO Members, *supra* note 47.

²¹⁷ E.U. Network of Indep. Experts of Fundamental Rights, *supra* note 74, at 14 (citing Abortion Act 1967 § (4)(1)-(3)); see also Protection of Conscience Project, Protection of Conscience Laws, United Kingdom, available at <http://www.consciencelaws.org/Conscience-Laws-United-Kingdom/LawUK01.html>.

²¹⁸ *Id.* (citing *Janaway v. Salford Health Authority*, 1988).

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Human Fertilisation and Embryology Act 1990 (c. 37), available at Protection of Conscience Project, Protection of Conscience Laws, United Kingdom, <http://www.consciencelaws.org/Conscience-Laws-United-Kingdom/LawUK01.html>.

²²² FIGO Members, *supra* note 47.

APPENDIX—B

Protection of Conscience for Health Care Professionals under the Laws of the United States & Individual States

The federal government and forty-seven states, in addition to Guam and the Virgin Islands, provide various degrees of legal protection for health care professionals who refuse to participate in abortion procedures based on religious or conscientious grounds.

Federal Legal Protection

42 U.S.C. § 300a-7. Sterilization or Abortion

(b) Prohibition of public officials and public authorities from imposition of certain requirements contrary to religious beliefs or moral convictions

The receipt of any grant, contract, loan, or loan guarantee under the Public Health Service Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6000 et seq.] by any individual or entity does not authorize any court or any public official or other public authority to require—

(1) such individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions; or

(2) such entity to—

(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or

(B) provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedures or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

(c) Discrimination prohibition

(1) No entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6000 et seq.] after June 18, 1973, may—

(A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel, because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.

(2) No entity which receives after July 12, 1974, a grant or contract for biomedical or behavioral research under any program administered by the Secretary of Health and Human Services may—

(A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel, because he performed or assisted in the performance of any lawful health service or research activity, because he refused to perform or assist in the performance of any such service or activity on the grounds that his performance or assistance in the performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting any such service or activity.

(d) Individual rights respecting certain requirements contrary to religious beliefs or moral convictions

No individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.

(e) Prohibition on entities receiving Federal grant, etc., from discriminating against applicants for training or study because of refusal of applicant to participate on religious or moral grounds

No entity which receives, after September 29, 1979, any grant, contract, loan, loan guarantee, or interest subsidy under the Public Health Service Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15001 et seq.] may deny admission or otherwise discriminate against any applicant (including applicants for internships and residencies) for training or study because of the applicant's reluctance, or willingness, to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions or sterilizations contrary to or consistent with the applicant's religious beliefs or moral convictions.

42 U.S.C. § 238n. Abortion-related discrimination in governmental activities regarding training and licensing of physicians

(a) In general.

The Federal Government, and any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that—

(1) the entity refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;

(2) the entity refuses to make arrangements for any of the activities specified in paragraph (1);
or

(3) the entity attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.

State Legal Protection

Only three (3) states in the United States do not provide for the civil rights of healthcare providers with regard to conscience laws: Alabama, New Hampshire, and Vermont. Below are the laws in the remaining states and territories.

ALASKA

ALASKA STAT. § 18.16.010(b) (LexisNexis 2010):

Nothing in this section requires a hospital or person to participate in an abortion, nor is a hospital or person liable for refusing to participate in an abortion under this section.

ARIZONA

ARIZ. REV. STAT. § 36-2154(A)-(B) (LexisNexis 2010):

A. A hospital is not required to admit any patient for the purpose of performing an abortion. A physician, or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital, doctor, clinic or other medical or surgical facility in which an abortion has been authorized, who states in writing an objection to the abortion on moral or religious grounds is not required to facilitate or participate in the medical or surgical procedures that will result in the abortion.

B. A pharmacy, hospital or health professional, or any employee of a pharmacy, hospital or health professional, who states in writing an objection to abortion, abortion medication, emergency contraception or any medication or device intended to inhibit or prevent implantation of a fertilized ovum on moral or religious grounds is not required to facilitate or participate in the provision of an abortion, abortion medication, emergency contraception or any medication or device intended to inhibit or prevent implantation of a fertilized ovum. The pharmacy, hospital or health professional, or an employee of the pharmacy, hospital or health professional, shall return to the patient the patient's written prescription order.

ARKANSAS

ARK. CODE ANN. § 20-16-601(a)-(b) (LexisNexis 2010):

(a) No person shall be required to perform or participate in medical procedures which result in the termination of pregnancy. The refusal of any person to perform or participate in these medical

procedures shall not be a basis for civil liability to any person nor a basis for any disciplinary or any other recriminatory action against him or her.

(b) No hospital, hospital director, or governing board shall be required to permit the termination of human pregnancies within its institution, and the refusal to permit the procedures shall not be grounds for civil liability to any person nor a basis for any disciplinary or other recriminatory action against it by the state or any person.

ARK. CODE ANN. § 20-16-304 (LexisNexis 2010) (emphasis added):

Public policy—Availability of procedures, supplies, and information--Exceptions.

It shall be the policy and authority of this state that:

(1) All medically acceptable contraceptive procedures, supplies, and information shall be available through legally recognized channels to each person desirous of the procedures, supplies, and information regardless of sex, race, age, income, number of children, marital status, citizenship, or motive;

(2) Medical procedures for permanent sterilization, when performed by a physician on a requesting and consenting person eighteen (18) years of age or older, or less than eighteen (18) years of age if legally married, be consistent with public policy;

(3) Dissemination of medically acceptable contraceptive information in this state and in state and county health and welfare departments, in medical facilities, at institutions of higher learning, and at other agencies and instrumentalities of this state be consistent with public policy;

(4) *Nothing in this subchapter shall prohibit a physician, pharmacist, or any other authorized paramedical personnel from refusing to furnish any contraceptive procedures, supplies, or information; and*

(5) *No private institution or physician, nor any agent or employee of the institution or physician, nor any employee of a public institution acting under directions of a physician, shall be prohibited from refusing to provide contraceptive procedures, supplies, and information when the refusal is based upon religious or conscientious objection. No such institution, employee, agent, or physician shall be held liable for the refusal.*

CALIFORNIA

CAL. HEALTH & SAFETY CODE § 123420(a)-(d) (LexisNexis 2009):

(a) No employer or other person shall require a physician, a registered nurse, a licensed vocational nurse, or any other person employed or with staff privileges at a hospital, facility, or clinic to directly participate in the induction or performance of an abortion, if the employee or other person has filed a written statement with the employer or the hospital, facility, or clinic indicating a moral, ethical, or religious basis for refusal to participate in the abortion.

No such employee of a hospital, facility, or clinic that does not permit the performance of abortions, or person with staff privileges therein, shall be subject to any penalty or discipline on account of the person's participation in the performance of an abortion in other than the hospital, facility, or clinic.

(b) No medical school or other facility for the education or training of physicians, nurses, or other medical personnel shall refuse admission to a person or penalize the person in any way because of the person's unwillingness to participate in the performance of an abortion for moral, ethical, or religious reasons. No hospital, facility, or clinic shall refuse staff privileges to a physician because of the physician's refusal to participate in the performance of abortion for moral, ethical, or religious reasons.

(c) Nothing in this article shall require a nonprofit hospital or other facility or clinic that is organized or operated by a religious corporation or other religious organization and licensed

pursuant to Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250) of Division 2, or any administrative officer, employee, agent, or member of the governing board thereof, to perform or to permit the performance of an abortion in the facility or clinic or to provide abortion services. No such nonprofit facility or clinic organized or operated by a religious corporation or other religious organization, nor its administrative officers, employees, agents, or members of its governing board shall be liable, individually or collectively, for failure or refusal to participate in any such act. The failure or refusal of any such corporation, unincorporated association or individual person to perform or to permit the performance of such medical procedures shall not be the basis for any disciplinary or other recriminatory action against such corporations, unincorporated associations, or individuals. Any such facility or clinic that does not permit the performance of abortions on its premises shall post notice of that proscription in an area of the facility or clinic that is open to patients and prospective admittees.

(d) This section shall not apply to medical emergency situations and spontaneous abortions.

CAL BUS & PROF CODE § 733(a), (b)(3) (LexisNexis 2009) (pertaining to pharmacists) (emphasis added):

733. *Health care licentiate* required to dispense drugs and devices pursuant to lawful order or prescription; *Specified exceptions*; Violation as unprofessional conduct

(a) No licentiate shall obstruct a patient in obtaining a prescription drug or device that has been legally prescribed or ordered for that patient. A violation of this section constitutes unprofessional conduct by the licentiate and shall subject the licentiate to disciplinary or administrative action by his or her licensing agency.

(b) Notwithstanding any other provision of law, a licentiate shall dispense drugs and devices, as described in subdivision (a) of Section 4024, pursuant to a lawful order or prescription unless one of the following circumstances exists:

...

(3) *The licentiate refuses on ethical, moral, or religious grounds to dispense a drug or device pursuant to an order or prescription. A licentiate may decline to dispense a prescription drug or device on this basis only if the licentiate has previously notified his or her employer, in writing, of the drug or class of drugs to which he or she objects, and the licentiate's employer can, without creating undue hardship, provide a reasonable accommodation of the licentiate's objection. The licentiate's employer shall establish protocols that ensure that the patient has timely access to the prescribed drug or device despite the licentiate's refusal to dispense the prescription or order. For purposes of this section, "reasonable accommodation" and "undue hardship" shall have the same meaning as applied to those terms pursuant to subdivision (l) of Section 12940 of the Government Code.*

COLORADO

COLO. REV. STAT. § 18-6-104 (LexisNexis 2009):

A person who is a member of or associated with the staff of a hospital or any employee of a hospital in which a justified medical termination has been authorized and who states in writing an objection to the termination on moral or religious grounds is not required to participate in the medical procedures which result in the termination of a pregnancy, and the refusal of any such person to participate does not form the basis for any disciplinary or other recriminatory action against the person.

CONNECTICUT

REGS. CONN. STATE AGENCIES § 19-13-D54(f) (LexisNexis 2010):

No person shall be required to participate in any phase of an abortion that violates his or her judgment, philosophical, moral or religious beliefs.

DELAWARE

DEL. CODE ANN. tit. 24, § 1791 (LexisNexis 2010):

(a) No person shall be required to perform or participate in medical procedures which result in the termination of pregnancy; and the refusal of any person to perform or participate in these medical procedures shall not be a basis for civil liability to any person, nor a basis for any disciplinary or other recriminatory action against the person.

(b) No hospital, hospital director or governing board shall be required to permit the termination of human pregnancies within its institution, and the refusal to permit such procedures shall not be grounds for civil liability to any person, nor a basis for any disciplinary or other recriminatory action against it by the State or any person.

(c) The refusal of any person to submit to an abortion or to give consent shall not be grounds for loss of any privileges or immunities to which such person would otherwise be entitled, nor shall submission to an abortion or the granting of consent be a condition precedent to the receipt of any public benefits.

FLORIDA

FLA. STAT. ANN. § 390.0111(8) (LexisNexis 2009):

(8) REFUSAL TO PARTICIPATE IN TERMINATION PROCEDURE. – Nothing in this section shall require any hospital or any person to participate in the termination of a pregnancy, nor shall any hospital or any person be liable for such refusal. No person who is a member of, or associated with, the staff of a hospital, nor any employee of a hospital or physician in which or by whom the termination of a pregnancy has been authorized or performed, who shall state an objection to such procedure on moral or religious grounds shall be required to participate in the procedure which will result in the termination of pregnancy. The refusal of any such person or employee to participate shall not form the basis for any disciplinary or other recriminatory action against such person.

GEORGIA

GA. CODE. ANN. § 16-12-142(a)-(b) (LexisNexis 2009) (emphasis added):

(a) Nothing in this article shall require a hospital or other medical facility or physician to admit any patient under the provisions of this article for the purpose of performing an abortion.

(b) Any *pharmacist* who states in writing an objection to any abortion or all abortions on moral or religious grounds shall not be required to fill a prescription for a drug which purpose is to terminate a pregnancy; and the refusal of the person to fill such prescription shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against the person; provided, however, that the pharmacist shall make all reasonable efforts to locate another pharmacist who is willing to fill such prescription or shall immediately return the prescription to the prescription holder. The written objection shall remain in effect until the person revokes it or terminates his or her association with the facility with which it is filed. Nothing in this subsection shall be construed to authorize a pharmacist to refuse to fill a prescription for birth

control medication, including any process, device, or method to prevent pregnancy and including any drug or device approved by the federal Food and Drug Administration for such purpose.

HAWAII

HAW. REV. STAT. ANN. § 453-16(e) (LexisNexis 2009):

Nothing in this section shall require any hospital or any person to participate in an abortion nor shall any hospital or any person be liable for a refusal.

IDAHO

IDAHO CODE ANN. § 18-612 (LexisNexis 2009):

Nothing in this act shall be deemed to require any hospital to furnish facilities or admit any patient for any abortion if, upon determination by its governing board, it elects not to do so. Neither shall any physician be required to perform or assist in any abortion, nor shall any nurse, technician or other employee of any physician or hospital be required by law or otherwise to assist or participate in the performance or provision of any abortion if he or she, for personal, moral or religious reasons, objects thereto. Any such person in the employ or under the control of a hospital shall be deemed to have sufficiently objected to participation in such procedures only if he or she has advised such hospital in writing that he or she generally or specifically objects to assisting or otherwise participating in such procedures. Such notice will suffice without specification of the reason therefor. No refusal to accept a patient for abortion or to perform, assist or participate in any such abortion as herein provided shall form the basis of any claim for damages or recriminatory action against the declining person, agency or institution.

ILLINOIS

720 ILL. COMP. STAT. ANN. 510/13 (LexisNexis 2010):

No physician, hospital, ambulatory surgical center, nor employee thereof, shall be required against his or its conscience declared in writing to perform, permit or participate in any abortion, and the failure or refusal to do so shall not be the basis for any civil, criminal, administrative or disciplinary action, proceeding, penalty or punishment. If any request for an abortion is denied, the patient shall be promptly notified.

INDIANA

BURNS IND. CODE ANN. § 16-34-1-4 (LexisNexis 2009):

No:

(1) Physician; or

(2) Employee or member of the staff of a hospital or other facility in which an abortion may be performed;

shall be required to perform an abortion or to assist or participate in the medical procedures resulting in or intended to result in an abortion, if that individual objects to such procedures on ethical, moral, or religious grounds.

IOWA

IOWA CODE § 146.1 (LexisNexis 2008):

An individual who may lawfully perform, assist, or participate in medical procedures which will result in an abortion shall not be required against that individual's religious beliefs or moral convictions to perform, assist, or participate in such procedures. A person shall not discriminate against any individual in any way, including but not limited to employment, promotion, advancement, transfer, licensing, education, training or the granting of hospital privileges or staff appointments, because of the individual's participation in or refusal to participate in recommending, performing, or assisting in an abortion procedure. For the purposes of this chapter, "abortion" means the termination of a human pregnancy with the intent other than to produce a live birth or to remove a dead fetus. Abortion does not include medical care which has as its primary purpose the treatment of a serious physical condition requiring emergency medical treatment necessary to save the life of a mother.

KANSAS

KAN. STAT. ANN. § 65-443 (LexisNexis 2008) (emphasis added):

No person shall be required to perform or participate in medical procedures which result in the termination of a pregnancy, and the refusal of any person to perform or participate in those medical procedures shall not be a basis for civil liability to any person. No hospital, hospital administrator or governing board of any hospital shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any person because of such person's refusal to perform or participate in the termination of any human pregnancy.

KENTUCKY

KY. REV. STAT. ANN. § 311.800 (LexisNexis 2010):

- (1) No publicly owned hospital or other publicly owned health care facility shall perform or permit the performance of abortions, except to save the life of the pregnant woman.
- (2) In the event that a publicly owned hospital or publicly owned health facility is performing or about to perform an abortion in violation of subsection (1) of this section, and law enforcement authorities in the county have failed or refused to take action to stop such a practice, any resident of the county in which the hospital or health facility is located, may apply to the Circuit Court of that county for an injunction or other court process to require compliance with subsection (1) of this section.
- (3) No private hospital or private health care facility shall be required to, or held liable for refusal to, perform or permit the performance of abortion contrary to its stated ethical policy.
- (4) No physician, nurse staff member or employee of a public or private hospital or employee of a public or private health care facility, who shall state in writing to such hospital or health care facility his objection to performing, participating in, or cooperating in, abortion on moral, religious or professional grounds, be required to, or held liable for refusal to, perform, participate in, or cooperate in such abortion.
- (5) It shall be an unlawful discriminatory practice for the following:
 - (a) Any person to impose penalties or take disciplinary action against, or to deny or limit public funds, licenses, certifications, degrees, or other approvals or documents of qualification to, any hospital or other health care facility due to the refusal of such hospital or health care facility to perform or permit to be performed, participate in, or cooperate in, abortion by reason of objection thereto on moral, religious or professional grounds, or because of any statement or other manifestation of attitude by such hospital or health care facility with respect to abortion; or,

(b) Any person to impose penalties or take disciplinary action against, or to deny or limit public funds, licenses, certifications, degrees, or other approvals or documents of qualification to any physician, nurse or staff member or employee of any hospital or health care facility, due to the willingness or refusal of such physician, nurse or staff member or employee to perform or participate in abortion by reason of objection thereto on moral, religious or professional grounds, or because of any statement or other manifestation of attitude by such physician, nurse or staff member or employee with respect to abortion; or,

(c) Any public or private agency, institution or person, including a medical, nursing or other school, to deny admission to, impose any burdens in terms of conditions of employment upon, or otherwise discriminate against any applicant for admission thereto or any physician, nurse, staff member, student or employee thereof, on account of the willingness or refusal of such applicant, physician, nurse, staff member, student or employee to perform or participate in abortion or sterilization by reason of objection thereto on moral, religious or professional grounds, or because of any statement or other manifestation of attitude by such person with respect to abortion or sterilization if that health care facility is not operated exclusively for the purposes of performing abortions or sterilizations.

LOUISIANA

LA. REV. STAT. ANN. § 40:1299.31 (LexisNexis 2010):

A. No physician, nurse, student or other person or corporation shall be held civilly or criminally liable, discriminated against, dismissed, demoted, or in any way prejudiced or damaged because of his refusal for any reason to recommend, counsel, perform, assist with or accommodate an abortion.

B. No worker or employee in any social service agency, whether public or private, shall be held civilly or criminally liable, discriminated against, dismissed, demoted, in any way prejudiced or damaged, or pressured in any way for refusal to take part in, recommend or counsel an abortion for any woman.

MAINE

ME. REV. STAT. ANN. tit. 22, § 1591 (LexisNexis 2009) (emphasis added):

No physician, nurse or *other person* who refuses to perform or assist in the performance of an abortion, and no hospital or health care facility that refuses to permit the performance of an abortion upon its premises, shall be liable to any person, firm, association or corporation for damages allegedly arising from the refusal, nor shall such refusal constitute a basis for any civil liability to any physician, nurse or other person, hospital or health care facility nor a basis for any disciplinary or other recriminatory action against them or any of them by the State or any person.

No physician, nurse or *other person*, who refuses to perform or assist in the performance of an abortion, shall, because of that refusal, be dismissed, suspended, demoted or otherwise prejudiced or damaged by a hospital, health care facility, firm, association, professional association, corporation or educational institution with which he or she is affiliated or requests to be affiliated or by which he or she is employed, nor shall such refusal constitute grounds for loss of any privileges or immunities to which such physician, nurse or other person would otherwise be entitled nor shall submission to an abortion or the granting of consent therefore be a condition precedent to the receipt of any public benefits.

MARYLAND

MD. CODE ANN. HEALTH-GEN. § 20-214(a)-(c) (LexisNexis 2010):

(a) In general. –

(1) A person may not be required to perform or participate in, or refer to any source for, any medical procedure that results in artificial insemination, sterilization, or termination of pregnancy.

(2) The refusal of a person to perform or participate in, or refer to a source for, these medical procedures may not be a basis for:

(i) Civil liability to another person; or

(ii) Disciplinary or other recriminatory action against the person.

(b) Hospitals. –

(1) A licensed hospital, hospital director, or hospital governing board may not be required:

(i) To permit, within the hospital, the performance of any medical procedure that results in artificial insemination, sterilization, or termination of pregnancy; or

(ii) To refer to any source for these medical procedures.

(2) The refusal to permit or to refer to a source for these procedures may not be grounds for:

(i) Civil liability to another person; or

(ii) Disciplinary or other recriminatory action against the person by this State or any person.

(c) Patients. –

(1) The refusal of an individual to submit to or give consent for an abortion or sterilization may not be grounds for loss of any privileges or immunities to which the individual otherwise would be entitled.

(2) Submitting to or granting consent for an abortion or sterilization may not be a condition precedent to the receipt of any public benefits.

MASSACHUSETTS

MASS. ANN. LAWS. ch. 112, § 12I (LexisNexis 2009):

A physician or any other person who is a member of or associated with the medical staff of a hospital or other health facility or any employee of a hospital or other health facility in which an abortion or any sterilization procedure is scheduled and who shall state in writing an objection to such abortion or sterilization procedure on moral or religious grounds, shall not be required to participate in the medical procedures which result in such abortion or sterilization, and the refusal of any such person to participate therein shall not form the basis for any claim of damages on account of such refusal or for any disciplinary or recriminatory action against such person. The refusal of any person who has made application to a medical, premedical, nursing, social work, or psychology program in the commonwealth to agree to counsel, suggest, recommend, assist, or in any way participate in the performance of an abortion or sterilization contrary to his religious beliefs or moral convictions shall not form the basis for any discriminatory action against such person. Conscientious objection to abortion shall not be grounds for dismissal, suspension, demotion, failure to promote, discrimination in hiring, withholding of pay or refusal to grant financial assistance under any state aided project, or used in any way to the detriment of the individual in any hospital, clinic, medical, premedical, nursing, social work, or psychology school or state aided program or institution which is supported in whole or in part by the commonwealth.

MICHIGAN

MICH. COMP. LAWS SERV. § 333.20181 (LexisNexis 2009):

A hospital, clinic, institution, teaching institution, or other health facility is not required to admit a patient for the purpose of performing an abortion. A hospital, clinic, institution, teaching institution, or other health facility or a physician, member, or associate of the staff, or other person connected therewith, may refuse to perform, participate in, or allow to be performed on its premises an abortion. The refusal shall be with immunity from any civil or criminal liability or penalty.

MINNESOTA

MINN. STAT. § 145.414(a)-(b) (LexisNexis 2009):

(a) No person and no hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion for any reason.

(b) It is the policy of the state of Minnesota that no health plan company as defined under section 62Q.01, subdivision 4, or health care cooperative as defined under section 62R.04, subdivision 2, shall be required to provide or provide coverage for an abortion. No provision of this chapter; of chapter 62A, 62C, 62D, 62H, 62L, 62M, 62N, 62R, 64B, or of any other chapter; of Minnesota Rules; or of Laws 1995, chapter 234, shall be construed as requiring a health plan company as defined under section 62Q.01, subdivision 4, or a health care cooperative as defined under section 62R.04, subdivision 2, to provide or provide coverage for an abortion.

MISSISSIPPI

MISS. CODE ANN. § 41-107-5 (LexisNexis 2009) (Health-Care Providers):

(1) Rights of Conscience. A health-care provider has the right not to participate, and no health-care provider shall be required to participate in a health-care service that violates his or her conscience. However, this subsection does not allow a health-care provider to refuse to participate in a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(2) Immunity from Liability. No health-care provider shall be civilly, criminally, or administratively liable for declining to participate in a health-care service that violates his or her conscience. However, this subsection does not exempt a health-care provider from liability for refusing to participate in a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(3) Discrimination. It shall be unlawful for any person, health-care provider, health-care institution, public or private institution, public official, or any board which certifies competency in medical specialties to discriminate against any health-care provider in any manner based on his or her declining to participate in a health-care service that violates his or her conscience. For purposes of this chapter, discrimination includes, but is not limited to: termination, transfer, refusal of staff privileges, refusal of board certification, adverse administrative action, demotion, loss of career specialty, reassignment to a different shift, reduction of wages or benefits, refusal to award any grant, contract, or other program, refusal to provide residency training opportunities, or any other penalty, disciplinary or retaliatory action.

MISS. CODE ANN. § 41-107-7 (LexisNexis 2009) (Health-Care Institutions):

(1) Rights of Conscience. A health-care institution has the right not to participate, and no health-care institution shall be required to participate in a health-care service that violates its conscience. However, this subsection does not allow a health-care institution to refuse to participate in a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(2) Immunity from Liability. A health-care institution that declines to provide or participate in a health-care service that violates its conscience shall not be civilly, criminally or administratively liable if the institution provides a consent form to be signed by a patient before admission to the institution stating that it reserves the right to decline to provide or participate in a health-care service that violates its conscience. However, this subsection does not exempt a health-care institution from liability for refusing to participate in a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(3) Discrimination. It shall be unlawful for any person, public or private institution, or public official to discriminate against any health-care institution, or any person, association, corporation, or other entity attempting to establish a new health-care institution or operating an existing health-care institution, in any manner, including, but not limited to, any denial, deprivation or disqualification with respect to licensure, any aid assistance, benefit or privilege, including staff privileges, or any authorization, including authorization to create, expand, improve, acquire, or affiliate or merge with any health-care institution, because such health-care institution, or person, association, or corporation planning, proposing, or operating a health-care institution, declines to participate in a health-care service which violates the health-care institution's conscience.

(4) Denial of Aid or Benefit. It shall be unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance, grants or benefits, or in any other manner to coerce, disqualify or discriminate against any person, association, corporation or other entity attempting to establish a new health-care institution or operating an existing health-care institution because the existing or proposed health-care institution declines to participate in a health-care service contrary to the health-care institution's conscience.

MISS. CODE ANN. § 41-107-9 (LexisNexis 2009) (Health-Care Payers):

(1) Rights of Conscience. A health-care payer has the right to decline to pay, and no health-care payer shall be required to pay for or arrange for the payment of a health-care service that violates its conscience. However, this subsection does not allow a health-care payer to decline to pay or arrange for the payment of a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(2) Immunity from Liability. No health-care payer and no person, association, corporation or other entity that owns, operates, supervises or manages a health-care payer shall be civilly or criminally liable by reason of the health-care payer's declining to pay for or arrange for the payment of a health-care service that violates its conscience. However, this subsection does not exempt from liability a health-care payer, or the owner, operator, supervisor or manager of a health-care payer, for declining to pay or arranging for the payment of a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(3) Discrimination. It shall be unlawful for any person, public or private institution, or public official to discriminate against any health-care payer, or any person, association, corporation, or other entity (a) attempting to establish a new health-care payer, or (b) operating an existing health-care payer, in any manner, including, but not limited to, any denial, deprivation, or disqualification with respect to licensure, aid, assistance, benefit, privilege or authorization, including, but not limited to, any authorization to create, expand, improve, acquire, affiliate or merge with any health-

care payer, because a health-care payer, or a person, association, corporation or other entity planning, proposing or operating a health-care payer declines to pay for or arrange for the payment of any health-care service that violates its conscience.

(4) Denial of Aid or Benefits. It shall be unlawful for any public official, agency, institution or entity to deny any form of aid, assistance, grants, or benefits or in any other manner coerce, disqualify or discriminate against any health-care payer, or any person, association, corporation or other entity attempting to establish a new health-care payer or operating an existing health-care payer because the existing or proposed health-care payer declines to pay for, or arrange for the payment of, any health-care service that is contrary to its conscience.

MISS. CODE ANN. § 41-107-3(d) (LexisNexis 2009):

“Health-care payer” means any entity or employer that contracts for, pays for, or arranges for the payment of, in whole or in part, a health-care service, including, but not limited to, health maintenance organizations, health plans, insurance companies or management services organizations.

MISSOURI

MO. REV. STAT. § 188.105 (LexisNexis 2009):

1. It shall be unlawful:

(1) For an employer:

(a) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual’s refusal to participate in abortion;

(b) To limit, segregate, or classify his, her, or its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of such individual’s refusal to participate in abortion;

(c) To discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden under sections 188.100 to 188.120 or because he or she has filed a complaint, testified, or assisted in any legal proceeding under sections 188.100 to 188.120;

(2) For any person, whether an employer or employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under sections 188.100 to 188.120, or to attempt to do so.

2. Notwithstanding any other provision of sections 188.100 to 188.120, the acts proscribed in subsection 1 of this section shall not be unlawful if there can be demonstrated an inability to reasonably accommodate an individual’s refusal to participate in abortion without undue hardship on the conduct of that particular business or enterprise, or in those certain instances where participation in abortion is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

3. Nothing contained in sections 188.100 to 188.120 shall be interpreted to require any employer to grant preferential treatment to any individual because of such individual’s refusal to participate in abortion.

MO. REV. STAT. § 188.110 (LexisNexis 2009):

1. No public or private college, university or hospital shall discriminate against any person for refusal to participate in abortion.

2. No applicant, student, teacher, or employee of any school shall be required to pay any fees that would in whole or in part fund an abortion for any other applicant, student, teacher, or employee of

that school, if the individual required to pay the fee gives written notice to the proper school authorities that it would be in violation of his or her conscience or beliefs to pay for or fund abortions. The school may require the individual to pay that part of the fees not funding abortions, if the school makes reasonable precautions and gives reasonable assurance that the fees that are paid are segregated from any fund for the payment of abortions.

MONTANA

MONT. CODE ANN. § 50-20-111(2) (LexisNexis 2009):

(1) No private hospital or health care facility shall be required contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of its staff or governing board to admit any person for the purpose of abortion or to permit the use of its facilities for such purpose. Such refusal shall not give rise to liability of such hospital or health care facility or any personnel or agent or governing board thereof to any person for damages allegedly arising from such refusal or be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility or any personnel, agent, or governing board thereof.

(2) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in abortion because of religious beliefs or moral convictions. If requested by any hospital or health care facility or person desiring an abortion, such refusal shall be in writing signed by the person refusing, but may refer generally to the grounds of “religious beliefs and moral convictions”. The refusal of any person to advise concerning, perform, assist, or participate in abortion shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

(3) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this section. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

(4) Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the loss of any public benefits.

(5) As used in this section, the term “person” includes one or more individuals, partnerships, associations, and corporations.

NEBRASKA

NEB. REV. STAT. ANN. § 28-338 (LexisNexis 2009):

No person shall be required to perform or participate in any abortion, and the refusal of any person to participate in an abortion shall not be a basis for civil liability to any person. No hospital, governing board, or any other person, firm, association, or group shall terminate the employment or alter the position of, prevent or impair the practice or occupation of, or impose any other sanction or otherwise discriminate against any person who refuses to participate in an abortion.

NEVADA

NEV. REV. STAT. ANN. § 632.475.1 (LexisNexis 2009):

1. An employer shall not require a registered nurse, a licensed practical nurse, a nursing assistant or any other person employed to furnish direct personal health service to a patient to participate directly in the induction or performance of an abortion if the employee has filed a written statement

with the employer indicating a moral, ethical or religious basis for refusal to participate in the abortion.

2. If the statement provided for in subsection 1 is filed with the employer, the employer shall not penalize or discipline the employee for declining to participate directly in the induction or performance of an abortion.

3. The provisions of subsections 1 and 2 do not apply to medical emergency situations.

4. Any person violating the provisions of this section is guilty of a misdemeanor.

NEW JERSEY

N.J. STAT. ANN. § 2A:65A-1 (LexisNexis 2010):

No person shall be required to perform or assist in the performance of an abortion or sterilization.

NEW MEXICO

N.M. STAT. ANN. § 30-5-2 (LexisNexis 2009):

This article does not require a hospital to admit any patient for the purposes of performing an abortion, nor is any hospital required to create a special hospital board. A person who is a member of, or associated with, the staff of a hospital, or any employee of a hospital, in which a justified medical termination has been authorized and who objects to the justified medical termination on moral or religious grounds shall not be required to participate in medical procedures which will result in the termination of pregnancy, and the refusal of any such person to participate shall not form the basis of any disciplinary or other recriminatory action against such person.

NEW YORK

N.Y. CIV. RIGHTS LAW § 79-i(1) (LexisNexis 2010):

1. When the performing of an abortion on a human being or assisting thereat is contrary to the conscience or religious beliefs of any person, he may refuse to perform or assist in such abortion by filing a prior written refusal setting forth the reasons therefor with the appropriate and responsible hospital, person, firm, corporation or association, and no such hospital, person, firm, corporation or association shall discriminate against the person so refusing to act.

A violation of the provisions of this section shall constitute a misdemeanor.

2. No civil action for negligence or malpractice shall be maintained against a person so refusing to act based on such refusal.

NORTH CAROLINA

N.C. GEN. STAT. § 14-45.1(e)-(f) (LexisNexis 2009):

(e) Nothing in this section shall require a physician licensed to practice medicine in North Carolina or any nurse who shall state an objection to abortion on moral, ethical, or religious grounds, to perform or participate in medical procedures which result in an abortion. The refusal of such physician to perform or participate in these medical procedures shall not be a basis for damages for such refusal, or for any disciplinary or any other recriminatory action against such physician.

(f) Nothing in this section shall require a hospital or other health care institution to perform an abortion or to provide abortion services.

N.C. BOARD OF PHARMACY POLICY, CONSCIENCE CONCERNS IN PHARMACIST DECISIONS, <http://www.ncbop.org/LawsRules/ConscienceClause.pdf>.

A pharmacist should function by serving the individual, community and societal needs while respecting the autonomy and dignity of each patient. The best practice by a pharmacist is to promote the good for every patient in a caring, compassionate and confidential manner. Pharmacists should discuss and resolve any questions about emergency contraception prior to employment. Compassionate care and conscientious objection are not mutually exclusive.

A pharmacist has the right to avoid being complicit in behavior that is inconsistent with his or her morals or ethics. It is unacceptable, however, for pharmacists to impose their moral or ethical beliefs on the patients they serve. Pharmacists who object to providing a medication for a patient on this basis alone, therefore, should take proactive measures so as not to obstruct a patient's right to obtain such medication.

The Board notes that although pharmacists have a right to avoid moral or ethical conflict, they do not have a right to obstruct otherwise legitimate prescription dispensing or delivery solely on the basis of conscientious objection.

Board of Pharmacy staff interprets this policy to mean that if a pharmacist refuses to fill a prescription for emergency contraception then that pharmacist has an obligation to get the patient and the prescription to a pharmacist who will dispense that prescription in a timely manner.

NORTH DAKOTA

N.D. CENT. CODE § 23-16-14 (LexisNexis 2009):

No hospital, physician, nurse, hospital employee, nor any other person is under any duty, by law or contract, nor may such hospital or person in any circumstances be required to participate in the performance of an abortion, if such hospital or person objects to such abortion. No such person or institution may be discriminated against because the person or institution so objects.

OHIO

OHIO REV. CODE ANN. § 4731.91 (LexisNexis 2010):

(A) No private hospital, private hospital director, or governing board of a private hospital is required to permit an abortion.

(B) No public hospital, public hospital director, or governing board of a public hospital is required to permit an abortion.

(C) Refusal to permit an abortion is not grounds for civil liability nor a basis for disciplinary or other recriminatory action.

(D) No person is required to perform or participate in medical procedures which result in abortion, and refusal to perform or participate in the medical procedures is not grounds for civil liability nor a basis for disciplinary or other recriminatory action.

(E) Whoever violates division (D) of this section is liable in civil damages.

OKLAHOMA

OKLA. STAT. ANN. tit. 63, § 1-741 (LexisNexis 2009):

A. No private hospital, hospital director or governing board of a private hospital in Oklahoma, is required to permit abortions to be performed or induced in such hospital. Refusal to permit an

abortion, in accordance with a standard policy, is not grounds for civil liability nor a basis for disciplinary or other recriminatory action.

B. No person may be required to perform, induce or participate in medical procedures which result in an abortion which are in preparation for an abortion or which involve aftercare of an abortion patient, except when the aftercare involves emergency medical procedures which are necessary to protect the life of the patient, and refusal to perform or participate in such medical procedures is not grounds for civil liability nor a basis for disciplinary or other recriminatory action.

C. The rights and immunities granted by this section shall not include medical procedures in which a woman is in the process of the spontaneous, inevitable abortion of an unborn child, the death of the child is imminent, and the procedures are necessary to prevent the death of the mother.

OREGON

OR. REV. STAT. § 435.485(2) (LexisNexis 2007):

(1) No physician is required to give advice with respect to or participate in any termination of a pregnancy if the refusal to do so is based on an election not to give such advice or to participate in such terminations and the physician so advises the patient.

(2) No hospital employee or member of the hospital medical staff is required to participate in any termination of a pregnancy if the employee or staff member notifies the hospital of the election not to participate in such terminations.

PENNSYLVANIA

18 PA. CONS. STAT. § 3213(d) (LexisNexis 2009)

(d) PARTICIPATION IN ABORTION. --Except for a facility devoted exclusively to the performance of abortions, no medical personnel or medical facility, nor any employee, agent or student thereof, shall be required against his or its conscience to aid, abet or facilitate performance or an abortion or dispensing of an abortifacient and failure or refusal to do so shall not be a basis for any civil, criminal, administrative or disciplinary action, penalty or proceeding, nor may it be the basis for refusing to hire or admit anyone. Nothing herein shall be construed to limit the provisions of the act of October 27, 1955 (P.L. 744, No. 222), known as the "Pennsylvania Human Relations Act." Any person who knowingly violates the provisions of this subsection shall be civilly liable to the person thereby injured and, in addition, shall be liable to that person for punitive damages in the amount of \$ 5,000.

RHODE ISLAND

R.I. GEN. LAWS § 23-17-11 (2010):

A physician or any other person who is a member of or associated with the medical staff of a health care facility or any employee of a health care facility in which an abortion or any sterilization procedure is scheduled, and who shall state in writing an objection to the abortion or sterilization procedure on moral or religious grounds, shall not be required to participate in the medical procedures which result in the abortion or sterilization, and the refusal of the person to participate in the medical procedures shall not form the basis for any claim of damages on account of the refusal or for any disciplinary or recriminatory action against the person.

SOUTH CAROLINA

S.C. CODE ANN. § 44-41-50(a)-(c) (LexisNexis 2009):

(a) No physician, nurse, technician or other employee of a hospital, clinic or physician shall be required to recommend, perform or assist in the performance of an abortion if he advises the hospital, clinic or employing physician in writing that he objects to performing, assisting or otherwise participating in such procedures. Such notice will suffice without specification of the reason therefor.

(b) No physician, nurse, technician or other person who refuses to perform or assist in the performance of an abortion shall be liable to any person for damages allegedly arising from such refusal.

(c) No physician, nurse, technician or other person who refuses to perform or assist in the performance of an abortion shall because of that refusal be dismissed, suspended, demoted, or otherwise disciplined or discriminated against by the hospital or clinic with which he is affiliated or by which he is employed. A civil action for damages or reinstatement of employment, or both, may be prosecuted by any person whose employment or affiliation with a hospital or clinic has been altered or terminated in violation of this chapter.

SOUTH DAKOTA

S.D. CODIFIED LAWS § 34-23A-12 (LexisNexis 2009):

No physician, nurse or other person who refuses to perform or assist in the performance of an abortion shall be liable to any person for damages arising from that refusal.

S.D. CODIFIED LAWS § 34-23A-13 (LexisNexis 2009):

No physician, nurse or other person who performs or refuses to perform or assist in the performance of an abortion shall, because of that performance or refusal, be dismissed, suspended, demoted, or otherwise prejudiced or damaged by a hospital or other medical facility with which he is affiliated or by which he is employed.

S.D. CODIFIED LAWS § 34-23A-14 (LexisNexis 2009):

No hospital licensed pursuant to the provisions of chapter 34-12 is required to admit any patient for the purpose of terminating a pregnancy pursuant to the provisions of this chapter. No hospital is liable for its failure or refusal to participate in such termination if the hospital has adopted a policy not to admit patients for the purpose of terminating pregnancies as provided in this chapter.

S.D. CODIFIED LAWS § 36-11-70 (LexisNexis 2009):

No pharmacist may be required to dispense medication if there is reason to believe that the medication would be used to:

- (1) Cause an abortion; or
 - (2) Destroy an unborn child as defined in subdivision 22-1-2(50A); or
 - (3) Cause the death of any person by means of an assisted suicide, euthanasia, or mercy killing.
- No such refusal to dispense medication pursuant to this section may be the basis for any claim for damages against the pharmacist or the pharmacy of the pharmacist or the basis for any disciplinary, recriminatory, or discriminatory action against the pharmacist.

S.D. CODIFIED LAWS § 22-1-2(50A) (LexisNexis 2009) (emphasis added):

(50A) “Unborn *child*,” an individual organism of the species *homo sapiens* from *fertilization until live birth*.

TENNESSEE

TENN. CODE ANN. § 39-15-204 (LexisNexis 2010):

No physician shall be required to perform an abortion and no person shall be required to participate in the performance of an abortion. No hospital shall be required to permit abortions to be performed therein.

TEXAS

TEX. OCC. CODE ANN. § 103.001 (LexisNexis 2009):

A physician, nurse, staff member, or employee of a hospital or other health care facility who objects to directly or indirectly performing or participating in an abortion procedure may not be required to directly or indirectly perform or participate in the procedure.

UTAH

UTAH CODE ANN. § 76-7-306 (LexisNexis 2009):

(1) A physician, or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital in which an abortion has been authorized, who states an objection to an abortion or the practice of abortion in general on moral or religious grounds shall not be required to participate in the medical procedures which will result in the abortion, and the refusal of any person to participate shall not form the basis of any claim for damages on account of the refusal or for any disciplinary or recriminatory action against such person, nor shall any moral or religious scruples or objections to abortions be the grounds for any discrimination in hiring in this state.

(2) Nothing in this part shall require any private and/or denominational hospital to admit any patient for the purpose of performing an abortion.

VIRGINIA

VA. CODE ANN. § 18.2-75 (LexisNexis 2010):

Nothing in §§ 18.2-72, 18.2-73 or § 18.2-74 shall require a hospital or other medical facility or physician to admit any patient under the provisions hereof for the purpose of performing an abortion. In addition, any person who shall state in writing an objection to any abortion or all abortions on personal, ethical, moral or religious grounds shall not be required to participate in procedures which will result in such abortion, and the refusal of such person, hospital or other medical facility to participate therein shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against such person, nor shall any such person be denied employment because of such objection or refusal. The written objection shall remain in effect until such person shall revoke it in writing or terminate his association with the facility with which it is filed.

WASHINGTON

WASH. REV. CODE ANN. § 9.02.150 (LexisNexis 2010):

No person or private medical facility may be required by law or contract in any circumstances to participate in the performance of an abortion if such person or private medical facility objects to so

doing. No person may be discriminated against in employment or professional privileges because of the person's participation or refusal to participate in the termination of a pregnancy.

WEST VIRGINIA

W. VA. CODE § 16-2F-7 (LexisNexis 2009):

Nothing in this article, nor in any order issued pursuant thereto, shall require that a physician perform an abortion or that any person be required to assist in the performance of an abortion if such physician or person, for any reason, medical or otherwise, does not wish to perform or assist in such abortion.

WISCONSIN

WIS. STAT. ANN. § 253.09 (LexisNexis 2009):

(1) No hospital shall be required to admit any patient or to allow the use of the hospital facilities for the purpose of performing a sterilization procedure or removing a human embryo or fetus. A physician or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital in which such a procedure has been authorized, who shall state in writing his or her objection to the performance of or providing assistance to such a procedure on moral or religious grounds shall not be required to participate in such medical procedure, and the refusal of any such person to participate therein shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against such person.

(2) No hospital or employee of any hospital shall be liable for any civil damages resulting from a refusal to perform sterilization procedures or remove a human embryo or fetus from a person, if such refusal is based on religious or moral precepts.

(3) No hospital, school or employer may discriminate against any person with regard to admission, hiring or firing, tenure, term, condition or privilege of employment, student status or staff status on the ground that the person refuses to recommend, aid or perform procedures for sterilization or the removal of a human embryo or fetus, if the refusal is based on religious or moral precepts.

(4) The receipt of any grant, contract, loan or loan guarantee under any state or federal law does not authorize any court or any public official or other public authority to require: (a) Such individual to perform or assist in the performance of any sterilization procedure or removal of a human embryo or fetus if the individual's performance or assistance in the performance of such a procedure would be contrary to the individual's religious beliefs or moral convictions; or (b) Such entity to:

1. Make its facilities available for the performance of any sterilization procedure or removal of a human embryo or fetus if the performance of such a procedure in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions; or

2. Provide any personnel for the performance or assistance in the performance of any sterilization procedure or assistance if the performance or assistance in the performance of such procedure or the removal of a human embryo or fetus by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

WYOMING

WYO. STAT. ANN. § 35-6-106 (LexisNexis 2010):

No person shall, in any way, be required to perform or participate in any abortion or in any act or thing which accomplishes or performs or assists in accomplishing or performing a human miscarriage, euthanasia or any other death of a human fetus or human embryo. The refusal of any

person to do so is not a basis for civil liability to any person. No hospital, governing board or any other person, firm, association or group shall terminate the employment of, alter the position of, prevent or impair the practice or occupation of, or impose any other sanction or otherwise discriminate against any person who refuses to perform or participate in any abortion or in any act or thing which accomplishes, performs or assists in accomplishing or performing a human miscarriage, euthanasia or any other death of a human fetus or embryo.

GUAM

9 GUAM CODE ANN. § 31.22(a) (2009):

(a) No employer or other person shall require a physician, a registered nurse, a licensed vocational nurse, or any person employed or with staff privileges at a hospital, facility or clinic to directly participate in the induction or performance of an abortion, if such employee or other person has filed a written statement with the employer or the hospital, facility or clinic indicating a moral, ethical or religious basis for refusal to participate in the abortion.

No such employee or other person with staff privileges in a hospital, facility, or clinic shall be subject to any penalty or discipline by reason of his refusal to participate in an abortion. No such employee of a hospital, facility or clinic which does not permit the performance of abortions, or person with staff privileges therein, shall be subject to any penalty or discipline on account of such person[']s participation in the performance of an abortion in other than such hospital, facility or clinic.

No employer shall refuse to employ any person because of such person's refusal for moral, ethical or religious reasons to participate in an abortion, unless such person would be assigned in the normal course of business of any hospital, facility or clinic to work in those parts of the hospital, facility or clinic where abortion patients are cared for. No provision of this Chapter prohibits any hospital, facility or clinic which permits the performance of abortions from inquiring whether the employee or prospective employee would advance a moral, ethical or religious basis for refusal to participate in an abortion before hiring or assigning such a person to that part of a hospital, facility or clinic where abortion patients are cared for.

The refusal of a physician, nurse, or any other person to participate or aid in the induction or performance of an abortion pursuant to this subsection shall not form the basis of any claim for damages.

(b) No hospital, facility, or clinic shall refuse staff privileges to a physician because of such physician[']s refusal to participate in the performance of an abortion for moral, ethical, or religious reasons.

(c) Nothing in this Chapter shall require a non-profit hospital or other facility or clinic which is operated by a religious corporation or other religious organization or any administrative officer, employee, agent, or member of the governing board thereof, to perform or permit the performance of an abortion in such facility or clinic or to provide abortion services. No such non-profit facility or clinic organized or operated by a religious corporation or other religious organization, nor its administrative officers, employees, agents, or members of its governing board shall be liable, individually or collectively, for failure or refusal to participate in any such act.

The failure or refusal of any such corporation, unincorporated association or individual person to perform or to permit the performance of such medical procedures shall not be the basis for any disciplinary or other recriminatory action against such corporations, unincorporated associations, or individuals. Any such facility or clinic which does not permit the performance of abortions on its premises shall post notice of such proscription in an area of such facility or clinic which is open to patients and prospective admittees.

(d) This section shall not apply to medical emergency situations and spontaneous abortions. Any violation of this section is a misdemeanor.

VIRGIN ISLANDS

14 V.I. CODE ANN. § 154 (2010):

Except in case of emergency, no physician, nurse or any other hospital personnel shall be required to perform, assist or in any other way associate himself with the performance of an abortion, and no such physician, nurse or other hospital personnel may be held civilly or criminally liable for his refusal to participate in the performance of an abortion.

APPENDIX—C

PACE Draft Report - Women's access to lawful medical care: the problem of unregulated use of conscientious objection

Parliamentary Assembly
Assemblée parlementaire



Doc. 12347

20 July 2010

Women's access to lawful medical care: the problem of unregulated use of conscientious objection

Report¹

Social, Health and Family Affairs Committee

Rapporteur: Ms Christine McCafferty, United Kingdom, Socialist Group

Summary

The practice of conscientious objection arises in the field of health care when healthcare providers refuse to provide certain health services based on religious, moral or philosophical objections. While recognising the right of an individual to conscientiously object to performing a certain medical procedure, the Social, Health and Family Affairs Committee is deeply concerned about the increasing and largely unregulated occurrence of this practice, especially in the field of reproductive health care, in many Council of Europe member states.

There is a need to balance the right of conscientious objection of an individual not to perform a certain medical procedure with the responsibility of the profession and the right of each patient to access lawful medical care in a timely manner.

The Parliamentary Assembly should thus invite member states to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services, including reproductive health services, as well as to provide oversight and monitoring, including an effective complaint mechanism, of the practice of conscientious objection.

The Assembly should also recommend that the Committee of Ministers instruct the competent Steering Committees and/or other competent Council of Europe bodies to assist member states in the development of such regulations and the setting up of such oversight and monitoring mechanisms.

A. Draft resolution²

1. The practice of conscientious objection arises in the field of health care when healthcare providers refuse to provide certain health services based on religious, moral or philosophical objections. While recognising the right of an individual to conscientiously object to performing a certain medical procedure, the Parliamentary Assembly is deeply concerned about the increasing and largely unregulated occurrence of this practice, especially in the field of reproductive health care, in many Council of Europe member states.

2. The Assembly emphasises the need to balance the right of conscientious objection of an individual not to perform a certain medical procedure with the responsibility of the profession and the right of each patient to access lawful medical care in a timely manner. The Assembly is concerned that the unregulated use of conscientious objection disproportionately affects women, notably those having low incomes or living in rural areas.

3. In the majority of Council of Europe member states, the practice of conscientious objection is inadequately regulated or largely unregulated. A comprehensive and clear legal and policy framework governing the practice of conscientious objection by healthcare providers, coupled with an effective oversight and complaint mechanism, would have the potential to ensure that the interests and rights of both healthcare providers and individuals seeking legal medical services are respected, protected, and fulfilled.

4. In view of member states' obligation to ensure access to lawful medical care and to protect the right to health, as well as the obligation to ensure respect for the right of freedom of thought, conscience and religion of individual healthcare providers, the Assembly invites member states to:

4.1. develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services, including reproductive health services, which:

4.1.1. guarantee the right to conscientious objection only to individual healthcare providers directly involved in the performance of the procedure in question, and not to public or state institutions such as public hospitals and clinics as a whole;

4.1.2. oblige the healthcare provider to:

4.1.2.1. provide information to patients about all treatment options available (regardless of whether such information may induce the patient to pursue treatment to which the healthcare provider objects);

4.1.2.2. inform patients in a timely manner of any conscientious objection to a procedure, and to refer patients to another healthcare provider in that case;

4.1.2.3. ensure that patients receive appropriate treatment from the healthcare provider to whom they have been referred;

4.1.3. oblige the healthcare provider to provide the desired treatment to which the patient is legally entitled despite his or her conscientious objection in cases of emergency (notably danger to the patient's health or life), or when referral to another healthcare provider is not possible (in particular when there is no equivalent practitioner within reasonable distance);

4.2. provide oversight and monitoring, including an effective complaint mechanism, of the practice of conscientious objection so as to ensure that everyone, but particularly women, have access to an effective and timely remedy, and to guarantee the effective implementation and enforcement of these regulations within member states' respective health services.

B. Draft recommendation³

1. The Parliamentary Assembly refers to its Resolution ... (2010) on women's access to lawful medical care: the problem of unregulated use of conscientious objection and [Resolution 1607](#) (2008) on access to safe and legal abortion in Europe.

2. The Assembly is deeply concerned about the increasing and largely unregulated occurrence of conscientious objection, especially in the field of reproductive health care, which poses an obstacle to women's access to lawful medical care in many Council of Europe member states.

3. The Assembly believes that the right of conscientious objection of an individual not to perform a certain medical procedure must be balanced with the responsibility of the profession and the right of each patient to access lawful medical care in a timely manner.

4. Thus, the Assembly recommends that the Committee of Ministers:

4.1. invite member states to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services, including reproductive health services, as well as to provide oversight and monitoring, as outlined in Resolution ... (2010);

4.2. instruct the competent Steering Committees and/or other competent Council of Europe bodies to assist member states in the development of such regulations and the setting up of such oversight and monitoring mechanisms.

C. Explanatory memorandum by Ms McCafferty, rapporteur

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1. Introduction

1. On 14 October 2010, Ms Hägg (Sweden, Socialist Group) and a number of her colleagues tabled a motion for a resolution entitled “Women’s access to lawful medical care: the problem of unregulated use of conscientious objection” ([Doc. 11757](#)). This motion pointed out that, in the majority of the member states of the Council of Europe, the practice of conscientious objection in the medical field is inadequately or largely unregulated. The absence of a comprehensive and effective legal and policy framework governing the practice of conscientious objection by healthcare providers may severely affect individuals’ health and lives in a number of Council of Europe member states. The signatories of the motion were particularly concerned about the way in which the unregulated occurrence of this practice disproportionately affects women, notably those having low incomes or living in rural areas.

2. The motion was referred to this committee for report (which appointed me rapporteur), and to the Committee on Equal Opportunities for Women and Men for opinion (which appointed Ms Circene, Latvia, EPP/CD, rapporteur for opinion). The Social, Health and Family Affairs Committee organised an exchange of views with two experts on this issue⁴ at its meeting in Paris on 13 November 2009, and held a further exchange of views with two experts in Paris on 4 June 2010.⁵ This report also draws on my fact-finding visit to Austria and the Czech Republic in June 2009, as well as on the expertise of Ms Christina Zampas, whom I would like to thank for her contribution to this report.

3. Based on the facts, and after proposing a brief definition of the phenomena, I wish to examine international and European human rights law and international medical standards on this issue. I will then address various facets of the issue, illustrating them through the practice of conscientious objection in different member states and set forth examples of the impact that non-regulation can have on individuals’ health and lives. Lastly, I would like to propose lines of action to be followed at the national and European levels.

2. Conscientious objection in its various aspects

4. Conscientious objection in the medical field is generally based on personal convictions and ethical values of medical professionals of various professional categories (healthcare providers). Their convictions, very often linked to religion, can stand against their readiness to provide certain medical information and services. These consist, for example, of certain family planning services and reproductive technologies, safe abortion services where legal, and pain-relief by life-shortening means for terminally ill patients.⁶

5. The phenomenon of conscientious objection in the medical field is highly controversial and its appraisal depends on various legal and social factors in a given national context. The debate on

the issue is motivated by the wish to balance doctors' rights not to act contrary to their beliefs on the one hand, and patients' rights to access lawful medical procedures on the other.

6. Those who are against the idea of conscientious objection argue that a medical professional's conscience has little place in the delivery of modern medical care. Some even believe that if healthcare providers are not prepared to offer legal, efficient and beneficial care to a patient because it conflicts with their values, they should not practise medicine or related professions. In line with this attitude, the door to "value-driven medicine" is often seen as a door to a Pandora's box of idiosyncratic, bigoted and discriminatory medicine. The partisans of such attitudes quite frequently support the idea that doctors who compromise the delivery of medical services to patients on grounds of conscience should be punished through the removal of their license to practise and other legal mechanisms.

7. The argument in favour of allowing conscientious objection is that to fail to do so harms the healthcare providers and constrains their autonomy. Regardless of the position taken towards the issue as a whole, there is wide-spread belief that healthcare providers who have a conscientious objection to certain medical interventions should not be marginalised professionally.⁷ In order to ensure patients' access to lawful medical services, however, healthcare providers should be obliged, also by law, to refer patients to other colleagues willing to provide the service in question. The fact that this does not occur very often is of particular concern.

8. In the context of this report, it is important to note that most of the examples given are in the context of reproductive health, as this is the field in which the practice of conscientious objection most often arises, and most concerns women. However, the standards of access to medical care which are illustrated through the examples given are applicable in any situation where there is an objection by a healthcare provider.

3. Conscientious objection in international and European human rights law and medical standards

9. International and European human rights law recognises an individual's right to freedom of religion, conscience and thought as well as a state's obligations to respect that right. States also have an obligation to ensure access to lawful medical services, including reproductive healthcare services. Where these come into conflict, states should ensure that a healthcare service provider's refusal to provide medical care or deliver health-related products, does not unduly disadvantage or deny access to healthcare services which patients are legally entitled to receive.⁸

10. International human rights treaty monitoring bodies, such as the United Nations Committee on the Elimination of Discrimination Against Women, which monitors states' compliance with the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW Convention"), have repeatedly affirmed that states have a positive obligation to regulate the invocation of conscientious objection by health professionals so as to ensure that women's access to health and reproductive health is not limited.⁹ Overall, the regulation of the right to conscientious objection should implement "the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law."¹⁰

11. At European level, Article 9 of the European Convention on Human Rights guarantees the right to freedom of thought, conscience and religion and provides that this right is "subject to such

limitations as are prescribed by law and as are necessary in a democratic society in the interests of public safety, for the protection of public ... health, or the protection of the rights and freedoms of others". This limitation on an individual's right to conscientiously object was explicitly recognised by the European Court of Human Rights in the context of access to contraceptives.¹¹

12. Under international human rights law, states have a duty to ensure that healthcare providers' exercise of conscientious objection does not harm the health and rights of their patients. This means that regulation of the right to conscientious objection should ensure the functioning of administrative procedures that provide immediate alternatives to women when conscientious objection would otherwise deny the women access to a legal procedure.¹²

13. International medical ethical standards, such as those established by the World Health Organization (WHO) and the International Federation of Gynaecology and Obstetrics (FIGO) provide further guidance on regulating the right to conscientious objection. The WHO and FIGO both direct that physicians who conscientiously object to performing a procedure have a duty to refer the patient to another provider who does not object. Such physicians also have a duty to treat an individual whose life or health is immediately at risk, and to provide timely care when referral to other practitioners or delay would jeopardise the patient's health and well-being.

14. As regards hospitals and indirect service providers, the WHO makes it clear that hospital managers should ensure that trained staff, whatever their perspective, "are available at all times" to assist in cases of abortion complications,¹³ and that a public hospital, clinic or health centre cannot endanger women's lives or health by refusing services allowed by law.¹⁴ Lastly, FIGO affirms that physicians have "an ethical obligation, at all times, to provide benefit and prevent harm".¹⁵

4. Regulation and practice in Council of Europe member states

15. Many member states have enacted laws, ethical codes and occasionally regulations or guidelines, guaranteeing the right to conscientious objection in healthcare settings, and the national courts of some countries have developed jurisprudence on this topic. However, many countries facing problems in the area of conscientious objection in healthcare settings lack a comprehensive and effective legal and policy framework, as well as oversight mechanisms to govern the practice of conscientious objection by healthcare providers.

16. Some member states have constitutional protections for freedom of conscience, but have not elaborated on this right, and others only recognise the right to conscientious objection in the context of a specific medical procedure. Some countries do not regulate this practice at all,¹⁶ while others inadequately implement the regulatory framework in respect of conscientious objection.¹⁷

17. Healthcare providers who invoke conscientious objection have certain legal and ethical duties that aim to protect the patient. States should ensure that regulations on conscientious objection clearly specify these duties. The absence of effective legal and policy frameworks in some member states means that individuals are unable to access the healthcare services that they are entitled to receive, undermining, *inter alia*, their rights to healthcare services and to privacy, and potentially constituting a breach of the duty of care and abandonment of patients.¹⁸

4.1. Obligation to ensure availability and accessibility of lawful healthcare services through adequate personnel

18. According to international human rights law and medical standards, countries have an obligation to ensure the adequate availability and accessibility of quality sexual and reproductive healthcare services by, *inter alia*, employing staff who are available and willing to competently deliver services in a timely manner and within a convenient distance.¹⁹

19. Regulations on conscientious objection should establish clear procedures within healthcare facilities for medical personnel to report in advance their refusal to provide certain services, including the establishment of a register of objecting providers, and should clearly establish the duties of objecting healthcare providers (see sub-sections below on specific duties). Objecting healthcare providers have the burden of proving that their objection is grounded in their conscience or religious beliefs and that the refusal is in good faith.²⁰

20. Many countries regulate conscientious objection only, or primarily, in the abortion context, recognising that this is one of the most common medical procedures that healthcare providers may conscientiously object to. Hence, the examples given and many of the issues that arise do so in the abortion context. For example, in Croatia, it has been reported that some doctors will say they object to providing an abortion, but then offer the patient an abortion in a private setting, for financial gain. In Norway, regulations on conscientious objection require healthcare providers to give written notice to their employing hospital if they refuse to assist with abortions, and those hospitals, in turn, have to report it to government authorities. In Slovenia, the Health Services Act allows for conscientious objection in accordance with international rules on the practice. It requires healthcare workers to report their conscientious objection to their employing institution, and the institution to ensure that patients' rights to healthcare are accessible "without disruption". This enables member states to ensure that medical professionals willing to perform healthcare services are available.

21. Some countries have organised their healthcare system and personnel recruitment in such a way as to ensure that there are doctors willing and able to provide services. For example, guidelines on the appointment of doctors to hospital posts issued by the United Kingdom National Health Service recommend that termination of pregnancy duties should be a feature of the job when adequate services for termination of pregnancy "would not otherwise be available", that the job description should be explicit about termination of pregnancy duties, and that applicants should be "prepared to carry out the full range of duties which they might be required to perform if appointed", including duties related to termination of pregnancy.²¹

22. Other contexts where the issue of conscientious objection can be of relevance are "end of life situations" and the field of assisted reproduction. As far as the former is concerned, doctors are generally expected to treat patients in their best interest and notably to provide treatment if there are chances of recovery for the patient. Euthanasia is forbidden by law in many Council of Europe member states, such as in Austria, which is examined for the purpose of this report. The professional rules generally impose on medical professionals the duty to provide pain relief. The absence of a clear legislative framework, however, makes relevant decisions difficult for medical professionals. The healthcare providers' fear of litigation and challenge often leads to life-prolonging measures. Regarding this issue, reference must be made to the Parliamentary Assembly's [Resolution 1649](#) (2009) on palliative care, based on a report prepared by Wolfgang Wodarg (Germany, SOC), which stated that that "liberal constitutional states cannot leave ethical questions concerning the life and death of individuals unanswered".

23. According to the Austrian Law on Living Wills of 2006, patients can refuse treatment in end of life situations in advance. This is an ideal precondition to avoid demands for euthanasia legislation and has also made it easier for medical staff to deal with conflicting opinions of family members. It also creates better conditions for people who want to be able to die with dignity. Related to this issue and as a follow-up to [Resolution 1649](#) (2009), the Committee is currently working on a report on “Living wills and the protection of health and human rights”.

24. The field of assisted reproduction has been regulated by a number of member states. Relevant laws were, for example, introduced in the Czech Republic recently. Assisted reproduction is allowed for heterosexual couples with prior consent of the donors. Three cycles would generally be covered by the health insurance, so that even poor people can receive treatment and be fully reimbursed. Anonymous donors are allowed but are not paid. Surrogacy is not allowed at all. The issue of individual conscientious objection is, however, less problematic in this field, given the fact that only specialised centres offer such treatments anyway. The main issue arising here is one of (collective) ethics and the way it is expressed by the legal limits set in specific situations (homosexual couples, anonymous donors, surrogacy, etc.).

4.2. *Conscientious objection applies to individuals, not institutions*

25. According to international human rights law, the right to freedom of thought, conscience and religion is an individual right and, therefore, institutions such as hospitals cannot claim this right. Healthcare institutions, as state entities, have a duty to provide legal health services to the public.

26. In France, a Constitutional Council decision recognised that conscientious objection is a right afforded to individuals, not institutions, and upheld the repeal of paragraphs in the Code of Public Health, removing the possibility for department heads of public health establishments to refuse to allow the provision of abortion services in their departments. The Constitutional Council clarified that freedom of conscience is individual, not institutional or departmental.

27. In Germany, the Federal Administrative Court, in upholding the decision of the Bavarian Higher Administrative Court, indicated that public hospitals must provide abortions, enabling women to realise their entitlement to abortion under the law.

4.3. *Duties of healthcare providers*

28. Regulations on conscientious objection in healthcare settings recognise the right of healthcare providers to object to certain healthcare procedures, but also impose certain obligations on providers to ensure that patients receive the medical care they need and are legally entitled to receive. These obligations include the duty to provide information to patients about all the treatment options available, regardless of whether such information would induce the patient to pursue treatment to which the healthcare provider objects.

29. Healthcare providers also have a duty to inform patients in good time of any conscientious objection to a procedure, and in these circumstances to refer patients to another healthcare provider. Furthermore, the conscientious objector has a duty to ensure that any patient whom she or he refers receives quality treatment from the new healthcare provider. Additionally, in situations in which a referral to another healthcare provider is not possible, or in cases of emergency, the conscientious objector must provide the desired treatment to which the patient is legally entitled.

Patients' right to information

30. Conscientious objection regulations apply only to medical services; a healthcare provider cannot invoke the right to conscientious objection in relation to the provision of information. Even if they object to providing certain services, healthcare providers have the duty to offer accurate and non-biased information about all the medical procedures legally available, including the risks, benefits and alternatives to treatment, so that the patient can make an informed choice about the treatment to pursue. In order to enable the patient to make informed decisions about her or his healthcare, healthcare providers must provide diagnostic care services, such as prenatal examinations to detect foetal impairment, to all patients, whether or not the results of such care may lead to an objectionable act by the patient.

31. Additionally, in the United Kingdom, the General Medical Council Guidelines indicate that in a situation in which a doctor conscientiously objects to the provision of certain services, she or he must ensure that the patient has sufficient information about the available treatment options. The doctor must discuss with the patient the information that she or he has and that the patient might need. Furthermore, the doctor has an obligation to personally meet with such a patient and provide him or her with printed materials about any treatments or procedures which the doctor chooses not to provide him- or herself because of a conscientious objection.²²

Timely notice to patients and duty to refer

32. Conscientious objectors also have a duty to inform the patient in a timely manner of their conscientious objections to a specific procedure, and similarly, to refer such patient, in a timely manner, to a healthcare provider who is willing and able to perform the healthcare procedure or treatment and who is conveniently accessible.²³ This requirement for timely notice and referral should apply from the moment the patient first requests medical intervention from a healthcare provider.

33. For example, Portugal's Medical Association Code of Ethics mandates that a physician "immediately communicate" to patients his or her objection, while Law 16/2007 requires that physicians communicate their objections to patients in a "timely fashion". In France, doctors who conscientiously object also have a legal duty to a woman seeking an abortion to give her the name of experts to perform the procedure. In Poland, Croatia and Hungary, laws require physicians to inform patients of any conscientious objection to a procedure and refer such patients to other doctors, but they do not have an oversight mechanism to ensure that this happens, leaving many patients without a referral.

34. In the United Kingdom, guidelines issued by the British Medical Association (BMA)²⁴ and the Royal College of Obstetricians and Gynaecologists (RCOG), which have informed the implementation and judicial interpretation of the conscientious objection provisions of the 1967 Abortion Act, oblige physicians who conscientiously object to providing abortion services to take preparatory steps to arrange for an abortion and provide referrals to another doctor without delay. The BMA guidelines explicitly provide that "[i]t is not sufficient simply to tell the patient to seek a view elsewhere since other doctors may not agree to see her without appropriate referral". The RCOG has issued recommended referral times for abortion services.²⁵

35. In addition, the United Kingdom National Health Service guidelines, which are issued to provide guidance to practitioners, note that all doctors who conscientiously object to

“recommending termination should quickly refer a woman who seeks their advice about a termination to a different [general practitioner]. ... If doctors fail to do so, they could be alleged to be in breach of their terms of service”.²⁶ Similarly, in the Netherlands and France, laws place a legal obligation on healthcare professionals and physicians, respectively, to immediately communicate to a pregnant woman their refusal to perform an abortion.

Duty to treat if referral is not possible

36. In situations in which the healthcare provider is unable to guarantee that women will receive quality treatment elsewhere, that healthcare provider must provide treatment to the patient, regardless of whether it conflicts with her or his conscience.²⁷ In Norway, for example, a physician may not refuse to treat a patient unless the patient has reasonable access to another doctor who can provide the treatment. In San Marino, a physician who conscientiously objects to the performance of a procedure must refer the patient to another medical professional who can provide adequate treatment, and the physician must ensure that the patient continues to receive care during the transition period.

4.4. Conscientious objection applies to healthcare professionals directly performing medical treatment or procedures

37. While all countries that recognise conscientious objection in the healthcare context or in relation to a specific medical procedure extend such right to physicians, the application of this right to other healthcare personnel is often unclear and therefore problematic for defining the scope of the right. Conscientious objection should only be invoked by the personnel who are directly involved in the medical procedure and not by those who are involved indirectly, such as hospital administrators, nurses, etc. The resulting lack of clarity with regard to whom such a right extends may delay women’s access to reproductive health services.²⁸

38. Norway’s abortion regulations, for instance, establish that the right to refuse to participate in an abortion can only be claimed by those who are performing or assisting with the performance of the procedure and not by staff providing care or treatment to the woman before or after the procedure. Similarly, Italy’s abortion law does not exempt healthcare personnel from providing pre- and post-abortion care.

39. The case of *Pichon and Sajous v. France*, in the European Court of Human Rights, illustrates how accommodations to conscientious objection are not unlimited. The Court held that pharmacists who refused to sell contraceptives cannot impose their religious beliefs on others. The Court explained that the right to freedom of religion, as a matter of individual conscience, does not always guarantee the right to behave in public in a manner governed by that belief. The Court stated that “as long as the sale of contraceptives is legal and occurs on medical prescription nowhere other than in a pharmacy, the applicants cannot give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products”.²⁹

4.5. Exceptions to the invocation of a conscientious objection

40. Surveys show that only a limited number of Council of Europe member states expressly prohibit the invocation of conscientious objection in the case of emergency or risk of death as well as danger to the patient’s health.³⁰ This is an area that should generally be regulated in order to clarify the rights of both healthcare providers and their patients.

4.6. *Accountability and complaint mechanisms*

41. Member states have an obligation to put in place effective monitoring and accountability mechanisms to ensure that conscientious objection clauses do not, in practice, unduly disadvantage patients or deny them access to lawful healthcare services. Many countries have a general healthcare complaint mechanism as recourse for patients who believe their rights have been violated, through which illegal exercise of the right to conscientious objection can presumably be addressed. While a separate complaint mechanism may not be necessary for the issue of conscientious objection, laws and regulations that grant a right to conscientious objection should clarify that the exercise of this right in violation of the law will be subject to such member state's general complaints procedure and that individuals have a right to an effective remedy in a timely manner.

42. Every member state should have a complaint mechanism with a clear procedure available to individuals against a healthcare professional or institution who allegedly acts in violation of the law while providing medical services. All responses to complaints should be issued in a well-justified written decision available to all parties.

43. In the Czech Republic, for example, in the context of abortion, the law provides for a complaint mechanism with a timely appeals process, for when a gynaecologist denies a patient an abortion. While this mechanism does not explicitly make reference to conscientious objection, the time guidelines in this law are extremely important in ensuring that a woman is not denied access to abortion because of administrative delays that could be caused solely by a health professional's personal objections to the procedure. In cases in which a woman's right to access lawful health services is violated, legislation should establish appropriate sanctions and remedies.

5. **The impact on women's access to lawful medical care**

44. In practice, various factors can lead to situations where women's access to lawful medical care is affected. The most widely observed reasons are the lack of oversight mechanisms ensuring the implementation of existing legal provisions and policies, the non-respect of legal duties with regard to the information of patients, the absence of regulations requiring or facilitating timely action (notification of conscientious objection, appeals processes, etc.) as well as the lack of regulation regarding the scope of conscientious objection provisions.

5.1. *Lack of oversight mechanisms*

45. A recent report by Italy's Ministry of Health demonstrates the impact of the lack of oversight mechanisms that ensure the availability and accessibility of healthcare providers in the context of abortion. The report shows that nearly 70% of gynaecologists in Italy refuse to perform abortions on moral grounds, despite a strong legal framework in this area. The report found that between 2003 and 2007, the number of gynaecologists invoking conscientious objection in their refusal to perform an abortion rose from 58.7 to 69.2%. The percentage of anaesthetists who refused to assist in an abortion rose from 45.7 to 50.4%. In the southern parts of the country, the numbers are even higher.³¹

46. According to the International Planned Parenthood Federation (IPPF), in Austria, a woman faces a number of challenges in obtaining an abortion, even though the country expressly recognises a right to abortion, because healthcare professionals frequently conscientiously object to

performing this procedure. There are no specific legal guidelines regarding conscientious objection in Austria, but in practice, doctors can refrain from abortion if the only reason for the intervention is unwanted pregnancy, although no objection is possible if the mother's life is in danger. It has been reported that there is a difference of practice between the eastern and the western part of Austria (abortion being less accessible in the latter) and that few doctors are willing to perform abortions in rural areas of the country. As a result, women must travel to another region of Austria or even another country to obtain an abortion.³² In any case, the women concerned would have to pay themselves for medical services linked to abortion.

47. The ability of public institutions to conscientiously object to healthcare services impedes women's ability to exercise their right to legal sexual and reproductive health services, and oversight mechanisms are crucial in ensuring that this practice does not occur. For example, in Slovakia and Poland,³³ conscientious objection is often abused by the top management of hospitals, who frequently have an unwritten policy banning some interventions (usually abortions or sterilisations) throughout their hospital, regardless of the opinion of the healthcare staff. In Poland, many institutions do not have a formal policy of conscientious objection and, in many instances, individual providers do not formally invoke their right or express it in terms of conscientious objection. In the capital city of Slovakia, Bratislava, for instance, one of the public hospitals does not perform abortions. In the large regional capital of Trnava, no hospitals perform abortions.³⁴

5.2. *Non-respect of legal duties with regard to information of patients*

48. Breaches of the duties that conscientious objectors owe to their patients may also have dire consequences for women. For instance, if healthcare providers do not provide information to their patients about various treatment options, including diagnostic care, they deprive them of the opportunity to make informed decisions about the healthcare procedures that are in their best interest. Healthcare providers should not be allowed to invoke conscientious objection with regard to healthcare information, including diagnostic care that may or may not lead to objectionable treatment. Regarding yet an earlier 'stage' of information, it has been observed that the number of abortions decreases with the availability of contraception. Accordingly, the Ministry of Health of the Czech Republic has, until very recently, observed a significant long-term trend of decrease in abortions. This shows the importance of timely educational measures for the prevention of medical situations (such as abortion) where the issue of conscientious objection might arise.

49. A 2003 United Kingdom High Court judgment sheds some light on the potential unlawfulness of such acts. It found a doctor negligent for failing to properly counsel – in part because of his religious beliefs – his patient about her increased risk of giving birth to a baby with Down's syndrome and the availability of prenatal screenings for such abnormalities. The doctor, a devout Catholic, noted that he did not routinely and explicitly discuss screening for abnormalities with every pregnant woman. He testified that he thought pregnancy was a happy event and would want to "soothe, not alarm patients", but that he expected he would have told someone of the plaintiff's age that she was "at a slightly raised risk" for foetal abnormalities. The court noted that "[o]n his own account [the physician's] approach to the subject [of informing patients about screening for abnormalities] was coloured by his belief in Roman Catholic doctrine". The court ultimately found that if the doctor had used the phrase "slightly raised risk," as he testified, "it would have been seriously misleading"; considering that experts testified that the risk of foetal abnormalities increases significantly at the plaintiff's age.³⁵ As a result of the doctor's failure to provide such information, the patient could not make an informed choice about whether or not to carry her pregnancy to term, given the risk that her child could have Down's syndrome.

5.3. *Absence of regulations requiring or facilitating timely action*

50. In the absence of regulations requiring timely notification of a healthcare provider's conscientious objection to a specific procedure, accompanied by a timely referral to another provider, women may be unable to locate another healthcare provider to perform such procedure in a timely manner, which prevents them from accessing the healthcare services to which they are legally entitled.

51. For example, in Denmark, in response to a situation in which a woman who scheduled an appointment at a clinic to undergo an abortion, but was not informed by the doctor of his/her conscientious objection to the performance of abortions, nor was the patient provided with a timely referral, a representative of the Danish National Board of Health commented that doctors must immediately inform the patient of any conscientious objection. The failure to do so or to provide a referral could delay the time period within which a woman can legally exercise her right to a voluntary termination of pregnancy. Such a delay could cause the woman to exhaust the 12-week period during which she may legally procure an abortion, and thereby cause her to unwillingly forego her right to this procedure.³⁶

52. In addition, the necessity for a timely appeals process cannot be overstated, since reproductive health issues can easily be rendered moot by a slow encumbered system, with devastating results such as death or permanent health disability. For example, in the case of *Tysiack v. Poland*, the European Court of Human Rights stated that states must ensure access to lawful healthcare services and set up appeal mechanisms for women who are denied such services.³⁷ In that case, doctors refused to issue a certificate granting an abortion, despite serious health risks of delivery, and the woman's eyesight seriously deteriorated as a result of the childbirth; with a timely appeals process the woman would have been able to challenge the doctors' refusal to grant an abortion in time to obtain treatment that would have saved her from a permanent disability.

5.4. *Lack of regulation regarding the scope of conscientious objection provisions*

53. Furthermore, the lack of regulation in regard to whom and in respect of which services conscientious objection provisions apply prevent women from accessing the healthcare to which they are legally entitled. Legal 'loopholes' might possibly allow ancillary healthcare providers to object to the provision of subsidiary services, which may then delay or obstruct women's access to reproductive healthcare.

54. For example, the scope of the conscientious objection clause in the United Kingdom's abortion law was clarified by a 1988 House of Lords decision, which made clear that the clause applies only to participation in treatment. The case involved a doctor's secretary who objected to signing an abortion referral letter on grounds of conscience. The House of Lords held that such an act did not constitute part of the treatment for abortion and, thus, was not covered by the conscientious objection clause of the abortion law. The decision supports the proposition that doctors cannot claim exemption from giving advice or performing the preparatory steps to arrange an abortion if the request for abortion meets legal requirements.³⁸

6. **Conclusions**

55. Member states should enact comprehensive and clear regulations that balance the right of the healthcare provider to conscientiously object to the performance of a procedure, and ensure that

patients can exercise their right to access lawful health services. In situations in which such regulations exist, many member states lack oversight and monitoring mechanisms to ensure that healthcare providers act in accordance with them. Such regulations should establish mechanisms to ensure the accessibility and availability of healthcare providers when other healthcare providers may conscientiously object, and mandate the creation of a registry of conscientious objectors.

56. National regulations should recognise that the right to conscientious objection extends only to individuals, not to public or state institutions. Additional safeguards should delineate the duties of healthcare providers to their patients in the context of conscientious objection, which include a duty to:

- provide information to patients about all treatment options;
- inform patients of any conscientious objection and provide a referral to another healthcare provider, in a timely manner;
- ensure that the healthcare providers to which patients are referred will provide quality treatment, or in the absence of an appropriate referral or in emergency situations, require the conscientious objector to provide the necessary care.

57. National policies should define the scope of the right to conscientious objection in respect of the type of services and healthcare professionals to whom it applies, and carve out appropriate exceptions for emergency situations.

58. Lastly, all national regulations should establish effective complaint mechanisms that can address abuses of the right to conscientious objection and provide women with an effective and timely remedy.

59. The enactment by member states of regulations which include these principles will ensure that the interests and rights of both healthcare providers and individuals seeking legal healthcare are respected, protected and fulfilled.

¹ Reference to committee: [Doc. 11757](#), Reference 3516 of 26 January 2009.

² Draft resolution adopted by the committee on 22 June 2010.

³ Draft recommendation adopted by the committee on 22 June 2010.

⁴ Dr Christian Fiala, President of the International Federation of Professional Abortion and Contraception Associates, Austria, and Ms Christina Zampas, Senior Regional Manager and Legal Adviser for Europe of the Center for Reproductive Rights (New York/Stockholm).

⁵ Ms Eugenia Roccella, Undersecretary of State, Ministry of Labour, Health and Social Policies (Italy), and Ms Joanna Mishtal, Ph.D., Assistant Professor, Department of Anthropology, University of Central Florida (United States of America).

⁶ Bernard Dickens: The art of medicine. Conscientious commitment. www.thelancet.com, vol. 371, 12 April 2008.

⁷ Conscientious objection and doctors' personal beliefs, British Medical Association (BMA), 2007.

⁸ See: Universal Declaration of Human Rights; International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR) and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

⁹ Report of the United Nations CEDAW Committee, (2008).

- ¹⁰ Report of the International Conference on Population and Development.
- ¹¹ See *Pichon and Sajous v. France*, European Court of Human Rights, Application No. 49853/99 (admissibility decision), and Adriana Lamacková, Conscientious Objection in Reproductive Healthcare: Analysis of *Pichon and Sajous v. France*, *European Journal of Health Law* 15 (2008).
- ¹² See CEDAW General Recommendation on Women and Health, No. 24 (1999), paragraph 11.
- ¹³ WHO, Department of Reproductive Health and Research, Technical and Managerial Guidelines for Prevention and Treatment of Abortion Complications (1995).
- ¹⁴ See WHO, Safe Abortion Guidance (2003).
- ¹⁵ FIGO: Resolution on Conscientious Objection, 2006.
- ¹⁶ Andorra, Latvia, Malta, Montenegro, “the former Yugoslav Republic of Macedonia” and Sweden do not regulate conscientious objection. In the case of Sweden, healthcare providers are accommodated and there appears to be few problems in balancing the rights of healthcare providers with the rights of women.
- ¹⁷ Relevant evidence is known for Poland, Slovakia and Italy, for example.
- ¹⁸ See, generally, Rebecca J. Cook, Monica Arango Olaya, Bernard M. Dickens, Healthcare Responsibilities and Conscientious Objection, 104, *International Journal of Gynecology and Obstetrics* (2009) (hereinafter Cook et al., Healthcare Responsibilities).
- ¹⁹ See ICCPR, CEDAW and WHO.
- ²⁰ European Union Network of Independent Experts on Fundamental Rights, *The right to conscientious objection and the conclusion by EU Member States of concordats with the Holy See* (2005).
- ²¹ United Kingdom, NHS Guidelines, Appointment of doctors to hospital posts, NHS Executive HSG(94)39, 14 September 1994.
- ²² United Kingdom General Medical Council, “Personal Beliefs and Medical Practice”.
- ²³ CEDAW.
- ²⁴ BMA’s Handbook of Ethics and Law.
- ²⁵ BMA’s Handbook of Ethics and Law; RCOG Guidelines.
- ²⁶ United Kingdom NHS Guidelines, HSG(95)37, July 1995.
- ²⁷ See FIGO, 2006 Resolution on Conscientious Objection; CEDAW.
- ²⁸ This is particularly problematic in the case of emergency contraception (the “morning after pill”) if there is no pharmacist in the vicinity willing to sell the medication, since it needs to be taken within a certain number of hours.
- ²⁹ *Pichon and Sajous v. France* (admissibility decision), see footnote 11.
- ³⁰ Bosnia and Herzegovina, Croatia, Czech Republic, Hungary (risk of death applies only to abortion), Italy, Lithuania, Poland, Portugal, San Marino, Slovak Republic and the United Kingdom (abortion only).
- ³¹ Republic of Italy, Ministry of Health, Report of the Ministry of Health on the Performance of the Law Containing Rules for the Social Care of Maternity and Voluntary Interruption of Pregnancy: 2007-2008.
- ³² International Planned Parenthood Federation European Network, *Abortion Legislation in Europe*.
- ³³ *Reproductive Rights in Poland, the effects of the anti-abortion law*, Federation for Woman and Family Planning, edited by Wanda Nowicka (2008).
- ³⁴ Information provided by the Slovak Family Planning Association, 2010.
- ³⁵ *Enright and another v. Kwun and another*, 2003, High Court of England and Wales.
- ³⁶ “Ethical issues regarding abortion: How far does the right go?” (Etisk forbehold ved abort: Hvor langt rækker retten?), Ugeskrift for Læger, 2007.
- ³⁷ *Tysiack v. Poland*, European Court of Human Rights (2007).
- ³⁸ BMA’s Handbook of Ethics and Law.