MEMORÁNDUM BASADO EN EL

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"EL ACCESO DE LAS MUJERES A UNA ASISTENCIA MÉDICA LEGAL: EL PROBLEMA DEL USO NO REGULADO DE LA OBJECIÓN DE CONCIENCIA"

que se someterá a debate y votación en Estrasburgo, el 7 de octubre de 2010

Este informe ha sido elaborado a petición y disposición de los Miembros de la Asamblea Parlamentaria del Consejo de Europa por,

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El hecho de que una persona actúe bajo las órdenes de su Gobierno o de un superior no le exime de la responsabilidad bajo las leyes internacionales, siempre que se demuestre que tenía posibilidad de actuar moralmente de otra forma.
IV principio de Núremberg

El derecho a la objeción de conciencia es un aspecto fundamental del derecho a la libertad de pensamiento, conciencia y religión, consagrado en la Declaración Universal de los Recursos Humanos y en el Convenio Europeo de Derechos Humanos
Recomendación 1518 (2001) de la APCE

Se reconoce el derecho a la objeción de conciencia de acuerdo con las leyes nacionales que rigen la práctica de este derecho
Artículo 10.2 de la Carta de los Derechos Fundamentales de la Unión Europea.

Introducción

El Centro Europeo para la Ley y la Justicia (en adelante, ECLJ) es una organización no gubernamental internacional que se dedica a proteger los derechos humanos y de libertad religiosa en Europa. Los abogados del ECLJ han intervenido en numerosos casos ante el Tribunal Europeo de Derechos Humanos. Además, mantiene un estatus consultivo especial como ONG ante las Naciones Unidas.

La resolución apropiada de las cuestiones que se exponen en esta réplica al informe de Christine McCafferty, *El acceso de las mujeres a una asistencia médica legal: el problema del uso no regulado de la objeción de conciencia* (en adelante, *informe McCafferty* o *informe*) es un asunto de máxima preocupación organizativa para el ECLJ, por el perjuicio que causa al derecho de conciencia y a la libertad de religión correspondientes a los suministradores de asistencia sanitaria.

La resolución y recomendación no sólo obstaculizan con convicciones morales y culturales impenetrables, sino que también quebrantan la integridad y la libertad de conciencia. Asimismo, infringe el Convenio Europeo de Derechos Humanos, la Carta de los Derechos Fundamentales de la Unión Europea el Pacto Internacional de Derechos Civiles y Políticos.

Entre sus disposiciones más inaceptables, este documento del Consejo de Europa solicita a los Estados miembros que:

- «Coaccionen a los suministradores de asistencia sanitaria a que proporcionen el tratamiento deseado, al cual el paciente tiene legalmente derecho [es decir, al aborto] a pesar de su objeción de conciencia.»
- Coaccionen al personal sanitario a participar, de forma indirecta, en un aborto y en otras prácticas médicas graves, bajo cualquier circunstancia, a pesar de su objeción de conciencia.
- Coaccionen a los suministradores de asistencia sanitaria a que demuestren que «su objeción se fundamenta en convicciones religiosas o de conciencia y que su objeción es de buena fe.»
- Priven a las «instituciones públicas o del estado, tales como clínicas y hospitales públicos en su conjunto de la garantía del derecho a la objeción de conciencia.»
- Elaboren un «fichero de objetores de conciencia.»
- Elaboren un «mecanismo de recurso efectivo» contra los objetores de conciencia.

Este informe se centra «especialmente en el ámbito de los servicios de salud reproductiva» para las mujeres; esto es, principalmente en el aborto, pero también contempla otras prácticas tales como la reproducción asistida y la esterilización. El informe también menciona el «alivio del dolor mediante acortamiento de la vida» destinado a los pacientes que sufren enfermedad terminal; esto es, la eutanasia activa.

La resolución invita a los Estados miembros a que restrinjan el uso de la objeción de conciencia para facilitar el acceso al aborto y a otras prácticas que provoquen la interrupción de la vida humana.

Según dijo públicamente Bruno Nascimbene, miembro de la Red de expertos de la UE:

> Nadie en su sano juicio puede pensar que, en una sociedad basada en los valores de la libertad y la democracia occidental, se coaccione a practicar el aborto a médicos y enfermeras que lo consideran como homicidio. Si se produce una brecha en la libertad de conciencia, es posible que nos estemos adentrando en un camino muy peligroso[1].

El Convenio Europeo de Derechos Humanos establece unas bases, en lugar de unos límites, a los países miembros, con el fin de regular el uso de la libertad de conciencia, tal y como se estipula explícitamente en el artículo 9. Dichas bases son fundamentales en materia de objeción de conciencia médica; sin embargo, este informe, desmantela y restringe el derecho a la objeción de conciencia a los suministradores de asistencia sanitaria. Además, la intromisión del Consejo de Europa mediante un plan regulatorio impuesto resulta tanto innecesaria como onerosa y supone una intrusión a la soberanía de los Estados miembros para determinar la magnitud del derecho de conciencia, por encima de las bases estipuladas, según el artículo 9, aplicadas al personal sanitario.

Asimismo, contrariamente a las teorías del informe, gran parte de los suministradores de asistencia sanitaria de los cuarenta y siete Estados miembros del Consejo de Europa no se encuentran en situación de *no regulación*. Numerosos países tienen normas in situ y, además, están reguladas bajo unas pautas éticas profesionales y organizativas. De hecho, el informe sólo hace referencia a seis (de los cuarenta y siete) Estados miembros que están, supuestamente, en situación de *no regulación* y la ponente McCafferty, reconoce que en uno de esos países (Suecia) «parece que existen algunos problemas de equilibrio entre los derechos de los suministradores de asistencia sanitaria y los de las mujeres».

Por otro lado, los médicos, que consideran que estarían violando su convicciones religiosas o de conciencia al practicar un aborto, no pueden ser coaccionados a **tomar parte** en semejante acto. A diferencia del acceso al aborto o a la eutanasia, los derechos fundamentales de creencia y práctica religiosa están amparados, entre otras fuentes, por la Carta de los Derechos Fundamentales de la Unión Europea, la Directiva del Consejo de la Unión Europea 2000/79/EC (27 de noviembre del 2000), los artículos 9 y 14 del Convenio Europeo de Derechos Humanos (en adelante, CEDH), así como por el artículo 18 del Pacto Internacional de Derechos Civiles y Políticos (en adelante, PIDCP). Tal y como ha explicado el Tribunal Europeo de Derechos Humanos, el equilibrio que solicita el CEDH *no es aplicable* cuando un derecho amparado por el

[1] En referencia a la opinión de la Red Europea de Expertos Independientes, nº 4-2005: *El derecho a la objeción de conciencia y la conclusión de los Estados miembros de la UE que mantienen Concordatos con la Santa Sede* (14 de diciembre de 2005) [en adelante Opinión nº 4-2005].

Convenio es incompatible con derechos no tan protegidos[2]. Además, aunque la objeción de conciencia no estuviera explícitamente protegida como un derecho fundamental, la elección de un objetor de conciencia no es menos importante que la elección de una persona mayor o de una mujer embarazada para poner fin a la vida que llevan dentro.

En las siguientes secciones, este memorándum nos recuerda que:

1. El derecho a la objeción de conciencia está legitimado por leyes europeas e internacionales.
2. El Consejo de Europa y la Asamblea Parlamentaria siempre han promovido el derecho a la objeción de conciencia.
3. El derecho a la objeción de conciencia está amparado por normas éticas profesionales e internacionales.
4. El derecho a la objeción de conciencia está protegido y apropiadamente regulado en casi todas las sociedades democráticas.
5. El derecho a la objeción de conciencia siempre implica inmunidad ante la responsabilidad.
6. La objeción de conciencia se aplica a los individuos y a las instituciones.
7. El derecho a la objeción de conciencia implica inmunidad ante las discriminaciones.
8. El derecho a la objeción de conciencia excluye de cualquier deber a la hora de realizar el *proceso*, incluso si no es posible un traslado.
9. El derecho a la objeción de conciencia se aplica tanto a la intervención directa como indirecta.
10. El derecho a la objeción de conciencia no se puede sopesar con derechos inexistentes.
11. El derecho a la objeción de conciencia está legitimado, incluso en la ausencia de leyes nacionales específicas.
12. El derecho a la objeción de conciencia es un símbolo de libertad frente a los países totalitarios.
13. El informe McCafferty viola el principio de subsidiariedad.

<u>En el apéndice se presentan:</u>

A. Las leyes de la objeción de conciencia en los Estados miembros del Consejo de Europa.
B. Las leyes de Estados Unidos y de países individuales que protegen la conciencia de los profesionales de la asistencia médica.
C. El Proyecto de Resolución y el Informe de McCafferty.

[2] Véase la sentencia del CEDH sobre el caso «Chassagnou y otros contra Francia», [GC] n.os 25088/1994, 2833/1995 y 2844/1995, § 113, CEDH 1999-III [Se trata de un asunto diferente, donde las restricciones se imponen a un derecho o libertad legitimado por el Convenio, con el fin de proteger los "derechos y libertades" no enunciados como tal en la presente. En tal caso, sólo imperativos irrefutables pueden justificar la intervención con beneficio de un derecho del Convenio].

1. **El derecho a la objeción de conciencia está legitimado por leyes europeas e internacionales.**

Los suministradores de asistencia sanitaria, concretamente los médicos, se mantienen firmes en adherirse a sus convicciones de conciencia y religión, cuando se niegan a tomar parte en la interrupción de una vida humana. Como se ha mencionado anteriormente, los derechos fundamentales de creencia y práctica religiosa están amparados por los artículos 9 y 14, entre otros, por el Convenio Europeo de Derechos Humanos (CEDH), y además, por el artículo 18 del Pacto Internacional de Derechos Civiles y Políticos (PIDCP). Asimismo, el derecho a la objeción de conciencia está específicamente reconocido en la Carta de los Derechos Fundamentales de la Unión Europea. Dicha Carta estipula, en el artículo 10 de protección a la libertad de pensamiento, conciencia y religión, lo siguiente:

1 « Todo individuo tiene derecho a la libertad de pensamiento, conciencia y religión. Este derecho comprende la libertad a cambiar de religión o creencia, así como la libertad, sea individualmente o en comunidad con otras personas y de forma pública o privada, a manifestar su religión o creencia, en el culto, la enseñanza, las costumbres y la práctica.».
2 «El derecho a la objeción de conciencia está reconocido según las leyes nacionales que regulan la ejercicio de este derecho[3].»

La Directiva del Consejo de la Unión Europea 2000/78/EC del 27 de noviembre de 2000 que establece un marco general para el trato igualitario en el ámbito laboral, también estipula la protección de libertad de conciencia de los médicos. La Directiva prohíbe la discriminación directa o indirecta, basada, *inter alia*, en la religión o en la fe[4].
Estas disposiciones son probablemente aplicables a una denegación que permita al profesional sanitario ejercer su derecho de conciencia.

En el Convenio Europeo de Derecho Humanos, el artículo 9 que ampara «la libertad de pensamiento, conciencia y religión» y el artículo 14 correspondiente a la «Prohibición de discriminaciones», estipulan una amplia protección para la libertad de conciencia de los suministradores de asistencia sanitaria que se nieguen a tomar parte en la interrupción de una vida humana.

Únicamente en el caso de que la colaboración de la práctica recusada sea inexistente o, al menos, pasiva y muy distante, el Tribunal Europeo de Derechos Humanos restringirá el beneficio del derecho a la objeción de conciencia. Por ejemplo, el CEDH dictaminó sobre el caso **KNUDSEN contra Noruega**[5] que un párroco no puede negarse a cumplir con sus obligaciones oficiales (registro de matrimonio) como muestra de reivindicación contra la legislación del aborto llevada a cabo por el Parlamento Noruego. El párroco incluso puede predicar abiertamente contra el aborto, pero eso no justifica que deba incumplir con sus obligaciones para llevar a cabo otras actividades dirigidas en colaboración con el estado, ya que el vínculo entre su actividad personal y la práctica del aborto es muy atenuante. Algo semejante ocurrió con el caso **Jean BOUESSEL du BOURG contra Francia**[6], en el que el Tribunal también dictaminó que un contribuyente no puede negarse a pagar las rentas públicas destinadas a financiar propósitos inadmisibles, tales

[3] Diario Oficial de las Comunidades Europeas, C364/1, 2000/C 364/01 (18 de diciembre de 2000), art. 10

[4] Consejo de la Unión Europea, «Directiva 2000/78/EC del 27 de noviembre de 2000, que establece un marco general para el trato igualitario en el ámbito laboral», §§ 11-12, artículos 1-2.

[5] CEDH, 8 de marzo de 1985, «Knudsen contra Noruega», Demanda nº 11 045/84

[6] CEDH, 18 de febrero de 1993, «Jean BOUESSEL du BOURG contra Francia», Demanda nº 20747/92

como el aborto, puesto que el vínculo entre los impuestos y la práctica del aborto es muy improbable.

De lo contrario, cuando la colaboración en la práctica del *proceso* es activa o bien *pasiva y escasa*, sea directa o indirecta, el derecho a la objeción de conciencia queda totalmente fundado en el artículo 9. De este modo, en el caso reciente de **TYSIAC contra Polonia**[7], el Tribunal Europeo rehusó explícitamente restringir el derecho a la objeción de conciencia, cuando el solicitante (igual que un tercero) se queja de que «una ginecóloga podría negarse a practicar un aborto fundamentándose en la conciencia» y, aún más, quejarse también de que «un paciente no podría llevar a un médico ante la justicia por negarse a practicar un aborto» (§100). El Tribunal se negó tajantemente a determinar, en cualquier momento de su decisión, la libertad de conciencia médica de los médicos[8].

El derecho de libertad de conciencia también está amparado por el artículo 18 del PIDCP y además de las protecciones que otorgan fuerza legal a los objetores de conciencia, su análisis también contribuye en sí mismo a la interpretación del artículo 9 del CEDH.

No existe una reflexión explícita en el Pronunciamiento General nº 22 del Comité de Derechos Humanos (CDH), en el que se interpreta el artículo 18, que estipula el derecho de los profesionales sanitarios. Sin embargo, el CDH ofrece una interpretación ambigua de dicho artículo respecto a los objetores de conciencia al servicio militar, en el modo en que no puede diferenciarse de la situación apremiante de los suministradores de asistencia sanitaria, que deben afrontar la obligación de realizar más de un procedimiento desdeñoso, ya que ambos implican una *fuerza mortal*, al arrebatar la vida de otro:

> Muchos individuos han reivindicado el derecho a negarse a realizar el servicio militar (objeción de conciencia), fundándose en que dicho derecho se deriva de libertades contempladas en el artículo 18 […]. El Pacto no hace referencia explícita a la objeción de conciencia; no obstante, el Comité considera que semejante derecho puede derivarse de dicho artículo, puesto que la obligación de hacer uso de la fuerza mortal puede discrepar seriamente con la libertad de conciencia y el derecho a manifestar la propia religión o creencia[9].

Los suministradores de asistencia sanitaria, que se niegan a participar en el aborto o en la eutanasia, basándose en una conciencia moral superior, no son menos ajenos al hecho de que alguien le arrebate el derecho a la vida a otra persona que aquellos que se niegan a realizar el servicio militar, por verse obligados a hacer uso de la fuerza letal contra otro ser humano.

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[7] CEDH, 20 de marzo de 2007, «Tysiac contra Polonia», Demanda nº 5410/03.

[8] «Tysiac contra Polonia, nº 5410/03», § 124, 20 de marzo de 2007. [En este caso, el Tribunal Europeo aprobó el fondo de las leyes restrictivas polacas sobre el aborto, que lo aceptan sólo cuando sea médicamente necesario preservar la vida de la madre o su salud. El Tribunal tan sólo determinó que los procesos técnicos de Polonia, para obtener un aborto médicamente necesario, violaban el artículo 8 del Convenio Europeo de Derechos Humanos].

[9] Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, Comité de Derechos Humanos, Pronunciamiento General nº 22: «El derecho de libertad de pensamiento, conciencia y religión» (art. 18): 30/70/93. CCPR/C/21/Rev.1/Add.4, Pronunciamiento General nº 22, ¶ 11 (1993), disponible en http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument.

2. El Consejo de Europa y la Asamblea Parlamentaria siempre han promovido el derecho a la objeción de conciencia

Dado que el Consejo de Europa ha promovido en los últimos cuarenta y tres años el derecho a la objeción de conciencia, especialmente en materia de servicio militar, el Consejo no puede reprimir ahora este derecho por el simple hecho de que esté basado en otro aspecto de la ley que se encuentra en pleno conflicto moral y político. Significaría traicionar la primera postura de la Asamblea Parlamentaria en materia de objeción de conciencia, por lo que manifestaría que las prácticas sanitarias que ocasionan la interrupción de la vida humana son más necesarias y fundamentales por el bien de la sociedad que el servicio militar, y por ende, tendrían que ser obligatorias. En efecto, si, por un lado, existe un deber general para realizar el servicio militar (al que algunos pueden oponerse), por el otro, no existe tal deber para practicar el aborto. Es por este motivo, que la objeción de conciencia, en el ámbito de la sanidad, está más protegida por las leyes nacionales e internacionales que la objeción de conciencia al servicio militar.

Con el fin de cambiar ahora su postura a instancias de esos deseos de promover el aborto como derecho fundamental (que no lo es) frustraría el verdadero propósito de preservar los derechos humanos. En 1967, la Asamblea Parlamentaria del Consejo de Europa adoptó la Resolución nº 337 y la Recomendación nº 478, que estipulan la necesidad imperiosa de reconocer el derecho de objeción de conciencia con respecto al servicio militar. La Resolución «reconoce [reconocía] claramente la objeción de conciencia como un derecho humano: "Las personas con posibilidad de hacer el servicio militar que, por razones de conciencia o profundas convicciones de carácter religioso, ético, moral, humanitario, filosófico o semejantes, rehúsan hacerlo, deben poseer un derecho personal para eximirse de la obligación de realizar dicho servicio[10]" La Asamblea ya asentó las bases de este derecho en "los derechos fundamentales de las personas en las leyes democráticas de los estados de derecho que se contemplan en el artículo 9 del Convenio Europeo de Derechos Humanos; esto es, la libertad de conciencia y religión de las personas"»[11].

A dichas resoluciones les han sucedido, desde entonces, la Recomendación nº 816 (1977) y la Recomendación nº R (87) del Comité de Ministros, en 1987. En 2001, la Asamblea Parlamentaria adoptó, además, la Recomendación 1518 (2001)[12], en la que hacía hincapié en: «El derecho de objeción de conciencia es un aspecto fundamental del derecho a la libertad de pensamiento, conciencia y religión consagrado en la Declaración Universal de Derechos Humanos y en el Convenio Europeo de Derechos Humanos»[13].

[10] Recomendación 478 (1967), sobre el Derecho de Objeción de Conciencia, debate en la Asamblea el 26 de enero de 1967

[11] *Id. at 89*

[12] Recomendación 1518, «Ejercicio del derecho de objeción de conciencia al servicio militar en los estados miembros del Consejo de Europa» (2001) [el texto de la Recomendación [fue] adoptado por el Comité Permanente, en representación de la Asamblea, el 23 de mayo de 2001]

[13] Recientemente, el «Proyecto de Recomendación del Consejo de Europa, sobre los derechos humanos de las fuerzas armadas, realizado por el Comité de ministros y dirigido a los Estados miembros», aún reconoce el «derecho a la libertad de pensamiento, conciencia y religión», contemplado en el artículo 9. Comité Director de Derechos Humanos (CDDH), Comité de Expertos para el Desarrollo de los Derechos Humanos (DH-DEV), DH-DEV-FA(2009)008final (Estrasburgo, 25 de sept. 2009).

3. El derecho a la objeción de conciencia está amparado por normas éticas profesionales e internacionales.

La inmensa mayoría de los Estados miembros del Consejo de Europa están regulados por normas éticas profesionales y cuentan con líneas directrices a través de los miembros pertenecientes tanto a la Federación Internacional de Ginecología y Obstetricia (en adelante, FIGO) como a la Organización Mundial de la Salud (en adelante, OMS). Estas directrices proporcionan, *inter alia,* normas de orientación ética dirigidas a profesionales sanitarios, que pertenecen a un derecho profesional sanitario, para negarse concienzudamente a practicar abortos y otro tipo de métodos que provoquen la interrupción de la vida humana[14].

La Federación Internacional de Ginecología y Obstetricia estipula[15] que:
4. «Los suministradores de asistencia sanitaria tienen derecho a un respeto por sus convicciones de conciencia en lo que se refiere asumir o no el suministro de prácticas legales y a no sufrir discriminación basándose en sus convicciones.»

La oficina regional de la **Organización Mundial de la Salud** en Europa aconseja en sus líneas directrices consultativas a los estados miembros europeos, en materia de práctica del aborto[16] que «el personal sanitario tiene derecho a la objeción de conciencia a practicar un aborto»[17].

4. El derecho a la objeción de conciencia está protegido y apropiadamente regulado en casi todas las sociedades democráticas.

En Europa, los cuarenta y siete Estados miembros, sin excepción, cuentan con protecciones constitucionales para la libertad de conciencia y se han empleado en este derecho en el contexto específico de la medicina. Además, todos los miembros del Consejo de Europa son signatarios del Convenio Europeo, que otorga una protección internacional para la libertad de conciencia. Estas disposiciones se aplican plenamente al contexto laboral y de la medicina. McCafferty también lo reconoce: «Numerosos Estados miembros han promulgado leyes, códigos éticos y, ocasionalmente, regulaciones o líneas directrices que garantizan el derecho a la objeción de conciencia en el ámbito de la sanidad y los tribunales nacionales de algunos países han desarrollado una jurisprudencia sobre esta cuestión». Dichas legislaciones europeas están disponibles en el apéndice adjunto en el presente.

Sin embargo, McCafferty afirma que «la práctica de la objeción de conciencia está regulada de forma inadecuada o ampliamente irregulada en la mayoría de los países miembros del Consejo

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[14] Información perteneciente tanto al FIGO como a la OMS. Ambas cuentan con regulaciones y directrices importantes, adjuntas en el presente.

[15] Federación Internacional de Ginecología y Obstetricia. Recomendaciones sobre cuestiones éticas en obstetricia y ginecología por el comité del FIGO para el estudio de aspectos éticos en la reproducción humana (oct. 2009), disponible en: http://www.figo.org/files/figo-corp/Ethical%20Issues%20-%20English.pdf

[16] Oficina regional de la Organización Mundial de la Salud para Europa, «Directrices». http://www.euro.who.int/reproductivehealth/guidelines/20021015_1 (última consulta: 21 de noviembre de 2009)

> El personal sanitario tiene derecho a presentar una objeción de conciencia a la práctica del aborto, pero también tienen la obligación ética de seguir códigos éticos profesionales, que normalmente obligan a los profesionales sanitarios a que envíen a las pacientes a colegas cualificados que, en principio, no están en contra de la interrupción del embarazo, reconocido ante la ley. Si no se encuentra disponible ningún suministrador de asistencia sanitaria alternativo, el objetor debe proporcionar el aborto para salvar la vida de la paciente o para prevenir daños permanentes para su salud, según las leyes nacionales. Cuando un hospital, clínica o centro de salud ha sido diseñado como instalación pública, en la que se ofrece servicios autorizados por la ley, no puede poner en peligro la vida de las pacientes o su salud, negando sus servicios. Debería realizar servicios, relacionados con el aborto, fundamentados en la ley. Organización Mundial de la Salud, Ginebra, «Aborto seguro. Directrices políticas y técnicas para los sistemas sanitarios», 2003, en 66. http://whqlibdoc.who.int/publications/2003/9241590343.pdf.

de Europa». En efecto, uno de los objetivos del texto de McCafferty es transformar el derecho de la objeción de conciencia, tal y como se indica en las cláusulas, en una excepción de la regla general, obligando a los suministradores de asistencia sanitaria a proporcionar el *servicio sanitario* solicitado por el paciente.

De esta manera, McCafferty simplemente intenta implantar el pro-aborto en el orden del día. Otro activista pro-aborto, Ira Glasser, director de la Unión Americana por las Libertades Civiles, había sido citado para invocar la abolición de la objeción de conciencia en los profesionales médicos:

> Gran parte del debate centrado en la estrategia, con participantes preguntándose si era mejor trabajar para mejorar y restringir las cláusulas de conciencia o bien para combatirlas y eliminarlas todas […]. Aunque los activistas en derechos reproductivos deberían seguir trabajando para mejorar la objeción de conciencia, su mayor objetivo debería ser deshacerse de ellos[18].

En Estados Unidos, el gobierno federal junto con cuarenta y siete estados, además de las islas de Virgin y Guam, otorgan protección legal para los profesionales sanitarios que se niegan a participar en prácticas del aborto, fundándose en convicciones de conciencia o religiosas. Sólo tres estados de Estados Unidos no mantenían los derechos civiles del personal sanitario en materia de leyes de conciencia: Alabama, New Hampshire y Vermont. En el apéndice se encuentran las leyes de los estados mencionados y territorios. A continuación, hay dos ejemplos típicos de la legislación estatal.

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

(a) Ninguna persona se verá coaccionada a practicar o participar en procedimientos médicos que incurran en la interrupción del embarazo. La denegación de cualquier persona a practicar o participar en dichos procedimientos no será argumento para aplicar la responsabilidad civil a ninguna persona ni para emprender ninguna acción recriminatoria con ella.
(b) Ningún hospital, director de hospital, o consejo de dirección se verá obligado a permitir la interrupción de los embarazos dentro de sus establecimientos sanitarios y la denegación a permitir estos prácticas no será motivo para aplicar la responsabilidad civil a cualquier persona ni para que el estado o cualquier persona emprenda una acción recriminatoria contra él.

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

> (8) DENEGACIÓN A PARTICIPAR EN EL PROCESO DE INTERRUPCIÓN.
> Ninguna persona en esta sección coaccionará a otra o a otro hospital a participar en la interrupción de un embarazo, de la misma manera que ningún hospital o persona se hará responsable de dicha denegación. Ningún miembro o asociado, personal, cualquier empleado de un hospital o médico al que se le haya confiado, o bien haya autorizado o practicado la interrupción de un embarazo y que plantee una objeción de conciencia a dicho proceso, basándose en fundamentos morales o religiosos, será coaccionado a participar en el proceso que ocasionará

[18]Denise M. BURKE, «Derechos federales de las protecciones de conciencia: Mantenerse firme frente a los ataques constantes», en Americanos Unidos por la vida, *Defensa de la vida 2009*, 573 (AUL 2009) (cita de Ira Glasser, 2002 director ejecutivo de ACLU (Unión Americana por las Libertades Civiles)), «Derechos reproductivos y objeción de conciencia», 2002. Sumario Ejecutivo, en 10, citado en Conferencia de los Obispos Católicos de Estado Unidos, «Campaña para presionar a los hospitales a que practiquen el aborto», 1 (septiembre de 2003), disponible en: *http://www.usccb.org/prolife/issues/abortion/THREAT.PDF)*), disponible en: *http://dl.aul.org/wpcontent/uploads/pdfs/DL09--ALL.pdf*.

la interrupción del embarazo. La denegación por parte de cualquiera de estas personas o empleados a formar parte de dicho proceso no será motivo para emprender cualquier acción recriminatoria o disciplinaria contra ellos.

5. El derecho a la objeción de conciencia siempre implica inmunidad ante la responsabilidad.

Con el objetivo de «coaccionar [desconsideradamente] a los suministradores de asistencia sanitaria para que proporcionen el tratamiento deseado, al cual el paciente tiene legalmente derecho, a pesar de su objeción de conciencia», el proyecto de resolución de McCafferty invita a los Estados miembros a elaborar «un mecanismo de recurso efectivo que se ocupe de los abusos del derecho a la objeción de conciencia y que dote a las mujeres de un recurso efectivo dentro de un plazo apropiado».

Desde un punto de vista jurídico, la *cláusula de conciencia* no es más que una inmunidad oficial a la responsabilidad de negarse a participar en un aborto. La esencia de la *cláusula de conciencia* proporciona inmunidad al médico. Algo similar ocurre con los parlamentarios, esta inmunidad es una condición a su libertad, puesto que sólo una inmunidad semejante puede proteger de forma efectiva el ejercicio libre de las responsabilidades éticas y profesionales de la ocupación.

Estados Unidos y la mayoría de los países de Europa protegen explícitamente al personal sanitario y a las instituciones frente la responsabilidad que supone negarse a practicar o participar en un aborto o cualquier práctica relacionada. Estas protecciones legislativas proporcionan una inmunidad ante dicha responsabilidad, tal y como se establece en Mississippi:

A ningún suministrador de asistencia sanitaria se le imputará delito civil por negarse a participar en un servicio sanitario que viole su conciencia moral o religiosa[19].
Luisiana, entre otras muchas jurisdicciones, proporciona otro ejemplo de buena conducta:

> A. A ningún médico, enfermero/a, estudiante o cualquier otra persona o empresa se le imputará delito civil ni será discriminado, despedido, degradado o perjudicado o afectado, en cualquier sentido, a causa de su denegación, sea por el motivo que sea, a recomendar, aconsejar, practicar, asistir o facilitar un aborto.
> B. A ningún trabajador o empleado de cualquier organismo de servicios sociales, sea público o privado, se le imputará delito civil o será discriminado, despedido, degradado, perjudicado, afectado o presionado, en cualquier sentido, por negarse a tomar parte en un aborto o a recomendar o aconsejar a una paciente[20].

6. La objeción de conciencia se aplica a los individuos y a las instituciones.

El Tribunal Europeo de Derechos Humanos ha afirmado en reiteradas ocasiones que las instituciones, tales como hospitales, mantienen un interés legítimo en ser consecuentes con su ethos moral o ético y es posible que, por ejemplo, prohíba al personal no sólo practicar el aborto sino también promoverlo.
En el caso de **ROMMERLFANGER contra la República Federal de Alemania[21]** la Comisión Europea de Derechos Humanos dictaminó que un hospital tiene derecho a coartar al personal a que promueva el aborto. En este caso, la Comisión dictaminó que el hospital tenía derecho a

[19] MISSISSIPI, Miss. Código Ann. § 41-107-5
[20] LUISIANA LA. REV. STAT. ANN. § 40:1299.31.
[21] Comm. Eur. DH, 6 sept. 1989, nº 12242/86, «Rommelfanger contra RFA» : DR, nº 62, p. 151

despedir al doctor Rommelfanger, por su reputación pública contraria a la postura ética de su empleado. Por consiguiente, un hospital tiene naturalmente derecho a adoptar posturas éticas en las prácticas delicadas. Esta resolución se aplica a cualquier tipo de hospital, sea público o privado, ya que los hospitales públicos no carecen necesariamente de referencias éticas.

Recientemente, en el caso de **LOMBARDI VALLAURI contra Italia**[22], el Tribunal confirmó la jurisprudencia de ROMMERLFANGER y aplicó el artículo 4 de la Directiva 78/2000/CE_5 (§ 78), considerando que, en el contexto de una institución católica, una institución con una ethos moral tiene derecho a preservarla, incluso si supone limitar los derechos y libertades de otras personas.

7. El derecho a la objeción de conciencia implica inmunidad ante las discriminaciones.

El informe McCafferty conduce a la discriminación directa contra cualquier persona que se niegue a practicar o a tomar parte en un aborto o en cualquier práctica relacionada, tales como asistir, llevar a cabo o practicar un aborto, eutanasia o cualquier otra muerte de un feto o embrión humano. Orienta a la violación del derecho fundamental de conciencia y a numerosos actos de discriminación en el ámbito laboral.

El artículo 14 del Convenio, «Prohibición de la discriminación», mantiene la misma protección y aplicación del artículo 9 para todo el personal sanitario, a pesar de su creencia religiosa:

> El disfrute de los derechos y libertades expuestos en este Convenio estarán garantizados sin discriminación de ningún tipo, sea: sexual, racial, de color, lengua o religión, política, de pensamiento, origen nacional o social, de asociación con una minoría nacional, de propiedad, nacimiento o de cualquier otra categoría[23].

Por consiguiente, ningún empleado discriminará a nadie que rehúse practicar o tomar parte en un aborto o en cualquier práctica relacionada. Los médicos a menudo se ven presionados a participar en tal proceso y, al igual que los/as enfermeros/as que se niegan a hacerlo, sufren discriminación en su profesión.

Según explicaba el Tribunal en el caso «**THILIMMENOS contra Grecia**»[24], «el derecho a no ser discriminado por hacer uso de los derechos legitimados por el Convenio también se infringe cuando los estados carentes de una justificación objetiva y razonable no consiguen cambiar el trato a las personas, cuya situación es significativamente diferente»[25].

Las normas legales democráticas prohíben expresamente la discriminación hacia aquellos que se niegan a practicar o a participar en un aborto o en cualquier otra práctica que cause la interrupción de una vida humana. Por ejemplo, la ley federal de Estados Unidos, 42 U.S.C. § 300ª-7(c), «Esterilización o aborto» estipula que:

> Ninguna entidad [que reciba fondos del estado] […] debe:
> (A) Hacer discriminación laboral, de ascenso o contractual contra cualquier empleado, médico o personal sanitario.
> (B) Discriminar al personal o a otras concesiones de algunos médicos u otro personal sanitario por: haber practicado o ayudado en la realización de un proceso de esterilización legal o aborto;

[22] CEDH, 20 oct. 2009, «Lombardi Vallauri contra Italia», Demanda nº 39128/05.
[23] CEDH, artículo 14.
[24] «Thlimmenos contra Grecia» [GC], nº 34369/97, CEDH 2000-IV
[25] Id. § 44.

por haberse negado a practicar o asistir en la realización de dicho proceso basándose en que tales prácticas irían en contra de sus convicciones morales o de creencia religiosa, o bien, porque sus creencias religiosas o convicciones morales respeten los procesos de esterilización o abortos.

En el marco estatal, casi todos los estados americanos prohíben explícitamente la discriminación contra los objetores de conciencia. Pongamos por caso, la ley en Minesota que estipula lo siguiente:

> «Ningún individuo, hospital o institución será coaccionado, imputado o discriminado de ninguna manera a causa de una denegación a practicar, facilitar, asistir o permitir un aborto, por cualquier motivo.»[26]

8. El derecho a la objeción de conciencia excluye de cualquier deber a la hora de realizar el *proceso,* incluso si no es posible un traslado.

McCafferty pretende que los suministradores de asistencia médica tengan el «deber de proporcionar el tratamiento, en caso de que no sea posible un traslado». Esto sería aplicable, en caso de emergencia, únicamente a los *tratamientos*; sin embargo, los *procesos* relativos a la objeción de conciencia, tales como el aborto o la eutanasia, no son tratamientos médicos y, por lo tanto, no se incluyen en este deber profesional.

9. El derecho a la objeción de conciencia se aplica tanto a la intervención directa como indirecta.

Según el informe de McCafferty, sólo los «profesionales sanitarios directamente implicados en la realización del proceso en cuestión» pueden, en algunas circunstancias, permitirse objetar. En otras palabras, todos los empleados médicos y paramédicos, tales como enfermeros/as y auxiliares, no podrían objetar bajo ninguna circunstancia. Únicamente el personal médico o el médico expresamente requerido para practicar (con sus propias manos) el aborto (o cualquier otra práctica que cause la interrupción de una vida humana), puede, en algunos casos específicos, realizar una objeción. Sin embargo, los/as enfermeros/as y otro personal que le asista no podría.

Además, el profesional sanitario se vería obligado a participar, de «forma indirecta», o a «intervenir [en la realización] del proceso en cuestión». Tal y como expone el texto de resolución del Consejo de Europa, los «suministradores de asistencia sanitaria» estarían obligados a «facilitar información», bajo cualquier circunstancia, sobre el práctica en cuestión, «enviar a las pacientes a otro suministrador de asistencia sanitaria [que podría realizar esta práctica] y asegurarse de que dicho suministrador proporciona a la paciente el tratamiento adecuado». En otras palabras, los profesionales sanitarios tendrían el deber de participar, de forma indirecta, en la realización de un aborto y otras prácticas recusadas y serían, de este modo, responsables de sus acciones.

Tal y como se ha debatido anteriormente sobre la jurisprudencia del Tribunal Europeo de Derechos Humanos aplicada a la objeción de conciencia médica, sólo cuando no exista participación efectiva en el *procedimiento* no se aplicará el derecho a la objeción de conciencia. Esta propuesta aparece claramente en las decisiones del Tribunal, especialmente en los casos de **KNUDSEN contra Noruega**[27], **PICHON y SAJOUS contra Francia**[28], **Jean BOUESSEL du**

[26] Minesota § 145.414 (a)-(b)
[27] CEDH, 8 de marzo de 1985, «Knudsen contra Noruega», Demanda nº 11045/84.

BOURG contra Francia[29]a, TYSIAC contra Polonia[30]. La objeción de conciencia se aplica a los profesionales sanitarios que se niegan a aconsejar, realizar o asistir, directa o indirectamente, un tratamiento médico u otros procesos. Cualquier médico que tome parte en un aborto mantiene su derecho de objeción de conciencia, tanto si su participación ha sido directa o indirecta, siempre y cuando dicha participación sea necesaria y forme parte de dicho *proceso*. Esto se aplica, por ejemplo, a todo el personal, sean auxiliares, enfermeros/as y anestesistas. La ley francesa, por ejemplo, establece en términos generales, que:

«Un médico no tiene la obligación de practicar, en ningún momento, […]. Ninguna comadrona, enfermero/a o auxiliar médico, sea quien sea, está obligado a contribuir en una interrupción de embarazo[31].» [*Contribuir* significa asistir de forma indirecta o indirecta].

Entre otras muchas leyes similares, el estado de Wyoming establece una disposición semejante:

«Ninguna persona será coaccionada, en ningún sentido, a realizar o tomar parte en ningún aborto o cualquier acto o asunto que consiga, realice o favorezca la práctica de un aborto humano, eutanasia o cualquier otra muerte de un feto o embrión humanos[32].»

La ley de Tejas es explícita en cuanto a la participación indirecta:

«Un médico, enfermero/a, miembro del personal sanitario o empleado de un hospital o de otro centro de salud, que se oponga a realizar o participar, directa o indirectamente, en un proceso de aborto, no puede ser coaccionado a realizar o participar, directa o indirectamente, en tal proceso[33].»

10. El derecho a la objeción de conciencia no se puede sopesar con derechos inexistentes.

La resolución de McCafferty invita a los Estados miembros a «establecer un equilibrio entre el derecho de objeción de conciencia de un individuo a no realizar un proceso médico dado con la responsabilidad profesional y el derecho de las pacientes al acceso a servicio sanitarios legales en un plazo de tiempo apropiado». La línea de actuación para «equilibrar [estos] derechos [consiste en] coaccionar al personal sanitario a que proporcione el tratamiento deseado, al que el paciente tiene legalmente derecho, a pesar de su objeción de conciencia».

El derecho fundamental a la libertad de conciencia y religión amparado por el Convenio no puede estar subordinado a ningún derecho o libertad *inexistente*, como es el caso del acceso a tratamientos, tales como el aborto o la eutanasia. McCafferty exige, de forma errónea, un *equilibrio* de "derechos" entre los objetores de conciencia y los pacientes; no obstante, la interpretación del Tribunal Europeo de Derechos Humanos sobre el Convenio solicita lo contrario: los derechos no enunciados o hipotéticos deben estar subordinados a aquellos derechos que estén reconocidos explícitamente y legitimados por el texto del Convenio. Dado que el Convenio no reconoce el aborto, la eutanasia y otras prácticas que ocasionan la interrupción de

[28] CEDH, 2 de octubre de 2001, «Pichon y Sajon contra Francia», Demanda nº 49853/99
[29] CEDH, 18 de febrero de 1993, «Jean BOUESSEL du BOURG contra Francia», Demanda nº 20747/92
[30] CEDH, 20 de marzo de 2007, «Tysiac contra Polonia», Demanda nº 5410/03
[31] Artículo L. 2212-8 CSP (Código de Estatuto Personal). [Aparece, asimismo, la interrupción médica del embarazo (artículo L. 2213-2 CSP)]
[32] Wyo. Stat. Ann. § 36-6-106 (LexisNexis 2009)
[33] Tex. Occ. Código Ann. § 103.001 (LexisNexis 2001)

una vida humana como derechos, *equilibrar* el acceso a dichos procesos y prácticas iría en contra de los derechos que estipula el artículo 9 del Convenio. Véase, por ejemplo, la sentencia de la Gran Sala del Tribunal en el caso **Chassagnou y otros contra Francia[34].**

La propuesta de McCafferty es completamente defectuosa, porque plantea el aborto y otras prácticas que causan la interrupción de una vida humana, como la eutanasia, así como cualquier otro *proceso* médico indiferente, con el objetivo de presentarlas como parte del *derecho a la salud* general. El informe insinúa que el aborto sólo es otra forma de asistencia médica corriente. Como tal, podría ser regulada como cualquier otro tratamiento de asistencia médica optativo y, de este modo, entrar en la misma categoría que cualquier otra obligación contractual. No obstante, incluso siendo un simple tratamiento médico optativo, en circunstancias de atención sanitaria normales, los profesionales sanitarios no deberían seguir estando obligados a practicar o participar en un proceso de aborto en contra de su voluntad. El personal sanitario puede negarse a realizar tal acción, fundándose en su juicio profesional de que la intervención no está garantizada (p.e. el riesgo es demasiado elevado o no existe una emergencia de salud, etc.). La elección del proceso permanecería en el juicio médico profesional. En esas situaciones, el derecho a la objeción de conciencia no está autorizado ni siquiera para la asistencia habitual.

11. El derecho a la objeción de conciencia está legitimado, incluso en la ausencia de leyes nacionales específicas.

Por principio, la interrupción de una vida humana está prohibida, en cualquier fase de la vida. El derecho a la objeción de conciencia existe sin ninguna ley específica, puesto que se funda en la naturaleza ética de la práctica médica. Dado que la eutanasia o el aborto son una *enfermedad social*, el derecho a la libertad de conciencia existe. Las leyes que permiten la intrusión en la integridad física sin una finalidad terapéutica (como las leyes que despenalizan el aborto, la eutanasia o la investigación embrionaria) establecen exenciones al principio de dignidad. Puesto que dichas prácticas son procesos que no tienen una «finalidad terapéutica y arrebatan la vida», la objeción de conciencia siempre queda disponible.

La eutanasia o el aborto, como interrupción voluntaria de una vida, no es un asunto de creencia u opinión, la interrupción de la vida es un hecho. Por lo tanto, el derecho a la objeción de conciencia no forma parte de un derecho más genérico de tener *una opinión* o una creencia religiosa; sino que se trata de un derecho a no participar en la interrupción voluntaria de una vida humana, cuando dicha interrupción está permitida por ley, tanto si se tiene una creencia religiosa como si *no*. De esta manera, es más sencillo que el propósito de la *cláusula de conciencia* permita a que alguien objetar que asegurarse de que nadie esté coaccionado a participar en contra de su voluntad. Esto explica también por qué McCafferty está fundamentalmente equivocada cuando exige que «la objeción de los suministradores de asistencia sanitaria tengan la carga de la prueba en que su objeción está fundamentada en sus creencias de conciencia o religión y que su denegación es de buena fe».

Contrariamente a la opinión extremamente personal de McCafferty, la buena fe del médico, que se niega a tomar parte en la interrupción de una vida humana, siempre se presupone. En una democracia, siempre se debería presuponer la libertada de conciencia y la buena fe y la coacción moral no deberían convertirse nunca en la regla.

[34] «Chassagnou y otros contra Francia» [GC], NOS. 25088/94, 2833/95 Y 2844/95, § 113, CEDH 1999-III [Es un *asunto diferente*, en el que las restricciones se imponen a un derecho o libertad, legitimados por el Convenio, con el objetivo de proteger *los derechos y libertades*, los cuales no están enunciados como tal en la presente].

12. El derecho a la objeción de conciencia es un símbolo de libertad frente a los países totalitarios.

La objeción de conciencia es un símbolo de libertad y también es un testimonio de la supremacía de la conciencia rotunda por encima de las leyes positivas injustas. El derecho de conciencia está protegido no sólo porque una facción política haya elegido protegerlo encarecidamente (y de este modo, puede ser sustituido potencialmente cuando el poder político cambia de manos), sino más bien porque la conciencia es precisamente un derecho fundamental que debería ser reconocido como tal. A pesar de la necesidad gubernamental de la ley para gobernar los excesos e irregularidades de la conducta de los ciudadanos, «existe un límite que la ley puede y debería esperar de aquellos a los que pretende servir»[35]. Este principio cobra mayor fuerza aún en las democracias occidentales, donde la ciudadanía se considera el señor más que el sirviente[36].

Según subraya Robert Araujo:

> El estado no confiere el derecho de conciencia, su origen no se encuentra en el estado, sino en la naturaleza humana que la otorga el Creador. Para aquellos que no muestran ninguna reivindicación y que ni siquiera niegan una creencia en el ateísmo, es importante recordar la verdad inexorable de que el estado no nos ha creado, ni que tampoco es nuestro creador o nuestro señor último[37].

Una dependencia singular con la ley positiva, sin restricción de la aplicación de la razón humana, lleva al positivismo y, esto realza la cuestión abordada por el profesor Hart en su debate sobre el régimen Nazi y la post-guerra de Alemania, en la que plantea que «los hombres débiles promulgan leyes débiles que otros cumplirán»[38].

Como respuesta a la experimentación legal y médica llevada a cabo por los nazis, los Principios de Núremberg han reafirmado claramente la supremacía de la conciencia absoluta, por encima de las leyes, y el deber legal del médico a cumplir con su conciencia. El cuarto principio de Núremberg establece lo siguiente:

«El hecho de que una persona actúe bajo las órdenes de su Gobierno o de un superior no le exime de la responsabilidad bajo las leyes internacionales, siempre que se demuestre que tenía posibilidad de actuar moralmente de otra forma. »

Este principio proclama el deber moral y legal de objetar conscientemente contra las exigencias y órdenes, aun siendo legales, siempre y cuando sean injustas.

13. El informe McCafferty viola el principio de subsidiariedad.

Al presuponer erróneamente la existencia de un derecho al aborto o a la eutanasia, el informe de Christine McCafferty viola el principio de subsidiariedad. El derecho a la vida y la determinación de cuándo empieza la vida, concretamente, son cuestiones que el Tribunal

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[35] Robert ARAUJO, «La protección de conciencia y la Santa Sede», 1 Ave María Int'l. L. J. 1, 10 (primavera de 2009), disponible en: http://www.avemarialaw.edu/assets/documents/InternationalLR/AraujoConscienceProtectionandtheHolySee.pdf (última visita: 18 de junio de 2010) [nota a pie de página omitido; énfasis añadido]

[36] Id.

[37] Id. at 14.

[38] Id. at 35 (cita de H.L.A. Hart, «El concepto de la ley 206» (The Legal Classics Library 1990) (1961)) [alteración del original]

Europeo de Derechos Humanos ha estimado que se encuentran fuera de la competencia del Consejo de Europa (y sus órganos) por la imposición de enfoques morales a los Estados miembros. Incluso aún más, el derecho de un suministrador de asistencia sanitaria a presentar una objeción de conciencia está íntegramente vinculado con el delicado ámbito del derecho a la vida y, de este modo, queda fuera de la jurisdicción del Consejo de Europa. La interpretación del Convenio respecto a las cuestiones sobre el *derecho a la vida* procede de la esencia de los pormenores morales que contribuyen a definirla. Medidas semejantes han de ser promulgadas a nivel nacional, tal y como lo explica el Tribunal en **VO contra Francia**[39].

La ley nunca ha forjado ni puede forjar un presunto derecho al aborto o a la eutanasia, ya que tales prácticas son intrínsecamente una renuncia al derecho a la vida y no un derecho en sí mismo. El Convenio sólo reconoce el derecho a la vida; aunque de forma incompleta debe ser legitimado. Sólo en casos excepcionales, bajo un margen de apreciación, el estado debe reducir el grado de protección garantizado a la vida humana. Sin embargo, dicha reducción no puede realizarse a expensas de los derechos fundamentales de los demás, como los de los médicos.

Los argumentos de imponer un supuesto derecho al aborto o a la eutanasia a través del Convenio son inexistentes. La exclusión de un feto o de personas mayores al derecho a la vida no puede derivarse del Convenio. En este punto, el Tribunal Europeo ha sostenido en reiteradas ocasiones que la prohibición del aborto o de la eutanasia es perfectamente consecuente con el Convenio. Una y otra vez, el Tribunal ha dictaminado, tal y como se ilustra en los casos: **Jean-Jacques AMY contra Bélgica (1998)**[40] y **Maria do Céu SOLVA MONTEIRO MARTINS RIBEIRO contra Portugal (2004)**[41] (que tratan sobre la conducta de un doctor belga y una enfermera en Portugal, respectivamente, que practicaron abortos de forma ilegal), que un estado debe condenar seriamente a aquellos que hacen abortar o practican abortos pese a las disposiciones penales. Por lo tanto, no existe ningún derecho al aborto que esté amparado por el Convenio. Recientemente, en el caso **TYSIAC contra Polonia**[42], el Tribunal validó el fundamento de la legislación polaca restrictiva sobre el aborto[43], en tanto que en el caso de **PRETTY contra el Reino Unido**[44], el Tribunal afirmó que no existía ningún derecho a la eutanasia amparado por el Convenio.

Una vez más, la cuestión del derecho a la vida es competencia de los estados nacionales.

El ECLJ advierte nuevamente a los miembros del APCE de que este informe perjudica gravemente la libertad de conciencia. La facilitación al acceso al aborto, que es lo que pretende este informe, no puede justificar el dolor, el daño y el perjuicio del seno del principio de *libertad de conciencia*.

Por todas las razones descritas anteriormente, el proyecto de resolución y de recomendación de McCafferty debe ser rechazado.

[39] Vo contra Francia [GC], Nº 53924/00, § 82, CEDH 2004-VIII.
[40] E. Com. H.R., 5 de octubre de 1988, «Jean-Jacques AMY contra Bélgica», Demanda nº 11684/85.
[41] CEDH, 26/10/2004, «Maria do Céu SILVA MONTEIRO MARTINS RIBEIRO contra Portugal», Demanda nº 16471/02
[42] «Tysiac contra Polonia», Demanda nº 5410/03, CEDH, 20 de marzo de 2007
[43] Id. § 124
[44] «Pretty contra el Reino Unido», nº 2346/02, CEDH 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

[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).

measures to ensure that such abortion is safe and accessible."[60] These guidelines are established for all of the European countries and include the appropriate standards for conscientious objection as follows[61]:

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]

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[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 fur Gynakologie 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 BelgischeVerenigning voor Gynecologie en Verloskunde/Societé Royale Belge de Gynécologie et d`Obstetrique is a member of FIGO.[76]

7. Bosnia and Herzegovina

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

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[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]

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[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]

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[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.

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 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 & Ginecologist 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 Gynäkilogie und Geurtshilfe* is a member of FIGO.[114]

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[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.

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 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 abortions[122] and medically assisted conception.[123] Voluntary abortions may only be performed

[115] FIGO Members, *supra* note 47.

[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)(3º) *available at* 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.

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, 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]

[124] Law 194 of 22 May 1978, art. 9.
[125] Law 194 of 22 May 1978, art. 9.
[126] *Id.*
[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%2597l%2Bn%25C4%2597%25C5%25A1tumo%2Bnutraukimo%2Boperacijos%2Batlikimo%2Btvarkos%26hl%3Den.
[135] FIGO Members, *supra* note 47.

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]

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

[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.
[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.

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]

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

[148] Id. at § 20(2).
[149] Id. at § 20(3).
[150] FIGO Members, *supra* note 47.
[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.lovdata.no/all/hl-19750613-050.html&rurl=translate.google.com&usg=ALkJrhjS1SAhLFvqLRx4-L18G67OZqzpZA, *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%3DUstawa%2Bo%2Bzawodzie%2Blekarza%2Bi%2Blekarza%2Bdentysty%2Bz%26hl%3Den
[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.

"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 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 recognizes[169] 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]

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[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.*

[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 Law16/2007 [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.

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]

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]

[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.
[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.

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 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,

[184] *Id.*
[185] *Id.*
[186] *Id.*
[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.

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

The *Sociedad Espanõla 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 & Gynekologi* (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 Geburtshilf/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]

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[198] Law 8/1998 (16 June, 1998) On Pharmacologists, Article 5(10) (Ley 8/1998, de 16 de junio, de ordenacion farmaceutica de la Communidad 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.*

[201] Law 8/1998 (16 June, 1998) On Pharmacologists, Article 5(10) (Ley 8/1998, de 16 de junio, de ordenacion farmaceutica de la Communidad 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).

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]

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

[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/preview.
[212] *Id.*, art. 14.
[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.*

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]

[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, pro- motion, 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 individuals performance or assistance in the performance of such a procedure would be contrary to the individuals 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

Parliamentary Assembly
Assemblée parlementaire
COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Doc. 12347

20 July 2010

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

Report[1]

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 resolution[2]

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 recommendation[3]

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 issue[4] 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 *Tysiac 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.

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[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] *Tysiac v. Poland*, European Court of Human Rights (2007).
[38] BMA's *Handbook of Ethics and Law*.