

Freedom of conscience workshop

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Values of the Profession

- Compassion
- Service
- Altruism
- Trustworthiness

Principles of practice

To patients

- Confidentiality
- Competence
- Collaboration
- Communication
- Manage conflicts of interest
- Advocate for patients

Principles of practice

To the profession

- Participating in self-regulation
- Reporting
- Educating
- Learning
- Advocating for a safe health care system
- Collaborating with other health care professionals

Principles of practice

 To self and others

- Mentorship
- Wellness
- Collegiality

Rights of patients

In law:

1. *Chaoulli v. Quebec (Attorney General); Flora v. Ontario Health Insurance Plan*

Despite publicly funded medical care, no particular patient has a “right” to any particular medical treatment

2. *R. v. Morgentaler*

Did not establish a “right” for a woman to have an abortion.

Rights of healthcare providers

Section 2 of *Charter of Rights and Freedoms*

Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

R. v. Big M Drug Mart (1985)

“Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.”

Right to conscience

- Physician who refused to prescribe birth control in Ontario (settled)
- Pharmacist in Alberta who refused to fill prescriptions for birth control (settled)
- Nurses in Ontario who were terminated because they refused to participate in abortions (settled)

Conscience rights

- *Amselem* (2004) – Jews may construct succah on balcony of condominium even in the face of a condo policy against having any structures on the balconies
- *Reference re Same-Sex Marriage* (2004) – “religious freedom is broad and jealously guarded in our *Charter* jurisprudence.”
- *Multani* (2006) – Sikh student can wear kirpan as religious requirement even in the face of a “no weapons” policy at a school

Balancing rights – courts side with family

Sawatzky v. Riverside Hospital (1998) – Manitoba. Family did not want “DNR” order and challenged it in court. Court sided with patient.

Golubchuk v. Salvation Army Grace General Hospital (2007) – Alberta. Court did not allow doctors to remove life support in the face of family opposition.

Cuthbertson v. Rasouli (2013) – Ontario (SCC). Physicians wished to remove life support from patient in vegetative state. Family objected. Court did not allow physicians to override patient unless order from Consent and Capacity Board.

Conscience issues

- Prescribing birth control
- Participating in or referring for sterilization
- Aspects of IVF
- Participating in or referring for abortion
- Participating in or referring for physician-assisted suicide or euthanasia
 - Quebec legislation
 - *Carter v. Canada* (SCC)
- Participating in or referring for transgendered treatment
- Prescribing medical marijuana

Colleges of Physicians and Surgeons

Ontario – voted March 6 to require physicians to refer for abortion, contraception and other treatments despite moral or religious exceptions

Saskatchewan – proposed requiring physicians to refer to objectionable procedures as well as to require them to perform procedures if there is no other doctor available. Revised to delete requirement for referral “to a physician who will ultimately potentially provide the service.”

Thoughts on way forward

1. Work with allies.
2. Get ahead of the curve.
3. Work on multiple fronts.

Possible approaches

1. Policies to protect conscience.
2. Criminal law to protect conscience (has been proposed federally).
3. Provincial law to protect conscience.
4. Strike.
5. Court action.