

# Reasonable Accommodation

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# Is Conscientious Objection Running Amok?

- U.S. Department of Health and Human Services (HHS) Final Rule, “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority” (84 FR 23170)
  - Broad protection of conscientious objection
  - Little concern for impact on patients: “The Department finds that finalizing the rule is appropriate without regard to whether data exists on the competing contentions about its effect on access to services...these rights [of conscientious objection] are worth protecting even if they impact overall or individual access to a particular service...”
  - Oversight and enforcement assigned to the HHS Office of Civil Rights (OCR)

# Preventing CO from Running Amok: Two Approaches

- Non-toleration: There is no place for CO in medicine
- Reasonable accommodation

# Key Differences in Conceptions of Reasonable Accommodation

- Does accommodation require specified actions (e.g., informing or referral)?
- Does accommodation require alternative service?
- Does accommodation require health professionals to provide a public justification of their refusal?

# Requirements of the Conventional Compromise

- A requirement to inform patients about the medical service if it is clinically appropriate;
- A requirement to refer patients to another professional willing and able to provide the medical service; and
- A requirement that referrals do not impose an unreasonable burden on patients

# An Outcome-focused Conception

- Objecting physicians will be accommodated only if it will not:
  - impede a patient's/surrogate's timely access to relevant information and referral;
  - impede a patient's timely access to clinically appropriate health care services; or
  - impose excessive burdens on other clinicians or organizations

# An Example

Dr. Kramer is a Memorial Hospital emergency department (ED) physician. He believes that all types of contraception are morally wrong, and he believes that it is morally wrong to give emergency contraception (EC) to patients, including rape victims. He also believes that he will be complicit in a moral wrong if he informs rape victims about EC or refers them to other providers who will dispense it. Offering EC to rape victims who present at a hospital ED is standard of care and required by Memorial Hospital policy.

# Applying the Outcome-focused Conception

- Dr. Kramer can be accommodated only if it is feasible to implement a process in the Memorial Hospital ED that:
  - assures that all rape victims who present at the Memorial Hospital ED are offered EC;
  - does not require any participation on the part of Dr. Kramer; and
  - does not place an excessive burden on other ED physicians or Memorial Hospital

# Two Reasons for Alternative Service

- An analogy with military service
- Fairness

# Why Require Public Justification?

- Robert Card's Answer:
  - “Since conscientious objection essentially involves moral beliefs, and the validity of ethical beliefs (and acts based upon them) depends upon critically assessing their justification, then a proper view on conscientious objection must examine the justificatory reasons of objecting providers.”

# Card's Requirements for “Grounding Reasons”

- They must be genuinely held fundamental moral beliefs
- They must be consistent with relevant empirical information
- They may not be based on discriminatory beliefs
- They must be reasonable
- They must be subject to evaluation in terms of their justifiability
- They must be based on reasonable conceptions of the good

# An Additional Constraint

- A physician's conscience-based refusal has significant moral weight only if it is not incompatible with the goals of medicine.