Literature Review: Conscientious Objection & Professionalism

Reviewed by Marissa D. Espinoza

Schuklenk, Udo, and Ricardo Smalling."Why medical professionals have no moral claim to conscientious objection accommodation in liberal democracies." Journal of medical ethics 43, no. 4 (2017): 234-240.

Udo Schuklenk and Ricardo Smalling argue that in liberal democracies medical professionals have no moral claim to conscientiously object to the provision of services that are within the scope of professional practice. Accommodating conscientious objection has numerous significant issues. First, we cannot determine the truth of the beliefs that are motivating the conscientious objection and we cannot determine that those beliefs are genuinely held. Because of this, any attempts to draw lines between objections that should be accommodated and those that should not will be arbitrary. Second, conscientious objection disregards the needs of patients and creates inefficiency and inequity in accessing healthcare. Consider a woman in a rural area where abortion is legal, but there are a limited amount of providers willing to provide this service. This may result in the woman having to "depend on the goodwill of volunteering doctors" (237). It is unavoidable that conscience claims will result in suboptimal access to healthcare and arbitrary service standards. Third, accommodating conscientious objection will also result in an inequitable workload for unobjecting doctors and it is unclear why this unfair burden should be accepted. As medical professionals voluntarily enter their profession, they should be prepared to offer the services that are within the scope of medical practice. If they are not able to offer those services, they do not belong in the profession.

Schuklenk and Smalling's argument provides a compelling account of how accommodating conscientious objection can result in unfair harms for patients. The potential harms patients, especially patients from vulnerable communities, may face should be addressed in all accounts of conscientious objection. It is important to consider ways potential harms to patients can be mitigated. While Schuklenk and Smalling's argument succeeds in highlighting potential harms that may result from accommodating conscientious objection, it operates on a misguided understanding of medical professionalism. Their conception of professionalism requires that an individual's religious beliefs be relegated to the private sphere. They wrongly assume that a person can disregard their own moral starting point and utilize only secular neutral reason. However, secular reason, like religious reason, is not without tradition. Further, professional

identity is not formed in a vacuum. It is the combination of professional and private values. Schuklenk and Smalling overlook how the private values of professionals can help to morally correct medicine when it strays into morally objectionable territory. This is not to say that all conscience claims should be accommodated regardless of the moral reasons for them because of their potential to help medicine morally self-correct. This is only to say that there is more value to accommodating conscientious objection than Schuklenk and Smalling acknowledge.

Symons, Xavier. "Conscientious objection in health care: Why the professional duty argument is unconvincing." The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine 47, no. 4 (2022): 549-557.

Xavier Symons responds to what he calls the Professional Duty Argument (PDA), which claims that doctors should set their moral or religious beliefs aside when they are in conflict with what the relevant professional associations have deemed a part of good medical practice. As the enter their profession voluntarily, they should be prepared to offer what has been determined to be a part of good medical practice. Under the PDA, accommodation of conscientious objection should be very limited, if allowed at all because it is at odds with professional duty. Symons raises two objection to the PDA—the fallibility objection and the professional discretion objection. The fallibility objection acknowledges that professional codes of conduct are epistemically fallible ways of determining what is good medicine. Accommodating conscience claims can provide a check on the law and professional associations that guide the moral conduct of doctors by allowing individual providers to determine whether the guidance of the law and the profession is ethical. The professional discretion objection recognizes the need for medical professionals to be afforded the discretionary space to determine what is best for a patient in a particular situation. The PDA disregards that medical judgments involve both technical and moral considerations. By heavily restricting the discretionary space of the medical professional, we are impeding their ability to better respond to particular needs of each individual patient and act with moral integrity. While this article provides a strong critique of the Professional Duty Argument, it does not consider what limits, if any, should be placed on the professional discretionary space.

Sulmasy, Daniel P. "Conscience, tolerance, and pluralism in health care." Theoretical medicine and bioethics 40, no. 6 (2019): 507-521.

Daniel Sulmasy addresses the issue of "how a tolerant, pluralistic, liberal democracy" should handle cases where a professional has an ethical objection to providing a morally controversial service that is legal and is supported by at least some members of the profession. Sulmasy claims that this is not necessarily an issue of conscience, but an issue of how much discretionary space professionals should be afforded to "foster the proper relationship among the state, the market, and the professions in a flourishing, pluralistic, liberal democracy" and how much discretionary space should be afforded to "meet the basic standards of tolerance that all citizens can expect in a flourishing, pluralistic, liberal democracy" (515). While professions establish

the goals and ethics of their practice alongside society, there must be discretionary space for individual professionals. In the same way it is not desirable for political powers to infringe upon the discretionary space of a profession, professions should aim to not infringe upon the discretionary space of individuals. As professional judgment has both technical and moral elements, it is important to respect the discretionary space of individuals to determine what is in the scope of good medicine. Sulmasy argues "forcing individuals to violate their deeply held moral beliefs regarding practices that are not central to their professional activities as a condition of practicing that profession, when the common good is not threatened, is intolerant" (517-518). Tolerance requires that a profession tolerate a diversity of personal characteristics and a diversity of beliefs and practices. However, there are limits to a person's claims of tolerance. While refusing to perform an action that is immoral has a claim to tolerance, refusing to treat someone you disagree with or whose personal characteristics you do not like does not have a claim to tolerance.

Sulmasy offers a much needed conceptual clarity to important terms in the conscientious objection debate (e.g., conscience, conscientious action, professional medical judgment, conscientious objection, conscience clauses, civil disobedience, and tolerance). As "the bar for not tolerating diverse views and practices, on a Lockean analysis, is quite high—tolerating the view must substantially undermine the common good," we are left to consider whether difficult cases of conscientious objection, such as those involving gender-affirming care, rise to the level of substantially undermining the common good (518).

SYNTHESIS

While common arguments against accommodating conscientious objection involve the privileging of secularly understood medical professionalism that is at odds with some religious traditions, these arguments remind us of the need to consider how we can better care for vulnerable patients and limit potential harms they may experience. As Catholic healthcare continues to care for patients of diverse backgrounds in an evolving sociopolitical landscape, we should be mindful of how formation efforts are occurring within a particular sociopolitical landscape. As these articles highlight, it is important that we consider what professional identity consists of and what the limits of professional discretion are. ✠

MARISSA D. ESPINOZA
Saint Louis University
St. Louis, Missouri
marissa.espinoza@slu.edu