

Coercion of Doctors: What is happening to modern medicine?

Although I represent *Medicine With Morality* I speak on behalf of all doctors concerned with the overriding of liberty of conscience in the practice of medicine and particularly *Doctors in Conscience* in Victoria.

Medicine With Morality was formed in early 2006 as a voice for Australian doctors concerned with the increasing drift of medical ethics away from moral absolutes and to defend liberty of conscience in the practice of medicine in accord with those absolutesⁱ.

Medicine With Morality is not a religious organisation. Any person of any religious or non-religious background can join as long as they hold that all human life has intrinsic value. Today our argument is not a religious one.

Our position on life is an honourable one steeped in thousands of years of ethical medicine. But I come not to defend that position. I come to defend liberty of conscience in the practice of medicine consistent with that position and to look at the consequences of failing to defend that liberty.

Are doctors being coerced? To answer that I want to look at where we have got to here and where we have got to in the world scene.

Where is coercion coming from and why?

How could it be this bad already?

How bad can it get? What is happening to modern medicine?

What do we need to do?

Where have we got to here?

With respect to the Abortion Law Reform Bill 2008 I think it is fair to say that most doctors were stunned that it was passed in its entirety. All amendments failed including the one to take out the clause eliminating doctors conscientious objection. And clause 8.3ⁱⁱ that states that (any) doctor must perform an abortion when it is necessary to preserve the life of the pregnant woman was either poorly drafted or just plain silly. Yes, of course, it would not see the light of day.

Words like unbelievable, incomprehensible come to mind. How could any government, anywhere, say that a doctor *must* cooperate in something that is against his or her conscience – especially when this involves killing?

Ancient and venerated medical ethics were trampled underfoot: *I will give no deadly medicine to any one if asked, nor suggest any such counsel; and in like manner I will not give to a woman a pessary to produce abortion.* Hippocratic Oath.

Where have we got to overseas?

The American College of Obstetricians and Gynecologists (ACOG) Committee on Ethics Opinion No. 385: November, 2007ⁱⁱⁱ even suggests that doctors who do not for reasons of conscience do abortions should “practice in proximity” to those who will. So, if the abortion provider leaves town the pro-life doctor has to leave town as well? As you would guess there has been considerable reaction to this suggestion.

Also in the USA, the Obama Administration has begun the process of rescinding the Department of Health and Human Services Regulations written specifically to protect the rights of health care providers to not be forced to perform or refer for abortions. These regulations stated that federal funds would not be provided to organizations that forced healthcare professionals to violate their conscience. Two organizations have been set up in the USA to protect conscience in medicine.^{iv}

There is anecdotal evidence of restriction of entry to O&G for residents who won't do abortions. Not surprisingly there is little hard evidence as any such discrimination is hardly likely to be admitted. There

is however reporting from the UK that some hospital doctors are not applying for specialties where their conscience is likely to be compromised.

Where is coercion coming from?

Inside medical science

- As a matter of principle directly expressed by Australian expatriate University of Oxford Professor Julian Savulescu, Director of the Oxford Uehiro Centre for Practical Ethics “If people are not prepared to offer legally permitted, efficient, and beneficial care to a patient because it conflicts with their values, they should not be doctors.” (BMJ 2006;332:294-297 February 4)
- Pressure from doctors who do abortions – it seems a diminishing number – wanting to share the workload for an acknowledged distasteful procedure and also wanting to ensure that abortion is readily available.
- Lachlan de Crespigny and Julian Savulescu in the *Medical Journal of Australia*^v argue “moral objections to beneficial, desired, legal and just medical interventions... cannot compromise patient care.” Clearly there are different views on what may compromise patient care. Good and beneficial medicine involves much more than that which may be desired and legal. Further, that which may be considered legally permissible should never compromise the ethical independence of the medical profession. We have been down that track before and must never go there again.

Outside the medical profession

- Health bureaucrats pushing doctors as service providers of client services instead of patient care; to ensure control and conformity and to have services available. This push for doctors being service providers was well illustrated by the document *Good Medical Practice: A Draft code of Professional Conduct* published by *The Australian Medical Council* in August last year – thankfully re-written since without that emphasis.
- Consumer groups also pushing for doctors as service providers
- Pro-abortion groups pushing an extreme agenda – we will make them (doctors) do what we want them to do.

Why?

- Obviously an active pro-abortion lobby wanting to ensure free unrestricted access to abortion services across Australia. It is noteworthy that Emily’s List^{vi} heralded the passing of the Abortion Law Reform Bill by recognising this “historic moment for the recognition of women’s rights in Victoria... able to access safe, legal terminations **free from persecution**; and medical practitioners provide vital reproductive health services to women **free from harassment** ...”. I make no comment.
- And then an attitude by some doctors “I am being compassionate and I am giving total care. If you will not join me in this you may not enter this profession.”

Re Compassion

Compassion is the commonest reason I hear from doctors as to why abortions should be performed.

There are at least two crucial flaws in the thinking behind this challenge.

Firstly, genuine compassion must be aligned with love and not pity. Pity is not enough and can be used to justify many evils. Here-and-now decisions made on the pressing basis of pity may be a betrayal of compassion for the future. Genuine compassion will look to the future holistic welfare of the person or persons concerned and therefore in conscience respectfully saying no to the requested procedure and seeking instead to give a more informed picture.

Secondly, such reasoning inevitably weighs the value of life and sometimes relative to that of another and whether one can be destroyed for the sake of another. But considerations of value and worth are too arbitrary and subject to the opinions and whims of the day on which to base decisions regarding life and death. Nations may decide that certain states of mental and physical capacity determine that individual’s right to exist or not exist. That *should* sound terrifyingly familiar.

How could it be and how can it be this bad?

That it is bad is of course my view – others will applaud. My view is that the legislation is a blight on the nation's conscience and a day of shame for Victoria.

Well-presented arguments against the bill's provisions were made by over 200 Victorian doctors and 150 doctors in other states through *Medicine With Morality*. That these arguments should be over-ruled demonstrates the single-mindedness and power of the pro-abortion lobby. It is sobering to consider the part that Emily's List has played in this "historic moment for the recognition of women's rights..." Their website boasts that of 152 Labor women in parliaments 113 are Emily's List members.

Now as it happens Victoria actually has a bill of rights that was passed in 2006. One would have thought that this would protect us but not only did it fail to give protection it specifically ruled out any consideration of abortion^{vii} "nothing in this Charter affects any law applicable to abortion or child destruction..."

Now some will be inclined to play down the significance of the Victorian legislation and just urge doctors to give the appropriate referrals. But the push for personal autonomy and demand for services to be provided by doctors (service providers as they would have it) will not end there. It will inevitably involve Physician Assisted Suicide (PAS) at the very least.

Let's look at the practical aspects of this. Abortion cannot and is not carried out by most GPs, not primarily for reasons of conscience but simply because most of us would not regard ourselves as having the ability to do it, and secondly we are not able to unless we are registered as being "procedural" for medical defence purposes.

But PAS is within every doctor's capability. And it brings in the principle of continuity of care. A doctor who has cared for their patient for the last decade or two and who is now looking after their dying patient at home is going to be in a seemingly indefensible position when requested to specifically assist with PAS if it was "legal". It would seem very appropriate for the patient to say "You are my doctor, you have looked after me for the last 10 years, you are caring for me now and I want you to carry out this final service for me." Now I might add in forty years of looking after my dying patients at home I have never been faced with such a request. But if PAS was legal and doctor's liberty of conscience was overruled then I could be justifiably charged with dereliction of duty of care if I were to not only refuse the request but also refuse to refer to someone who would accede to the request.

How bad can it get? Where could we be going?

Imagine this...

- abortion on demand for any reason at any stage of pregnancy
- "de-selection" of embryos, mature foetuses and late term unborn babies for reasons of eugenic selection of all disease or defect
- the imperfect newborn is also "de-selected" before self-awareness ("personhood") up to about 4-6 weeks of age
- organs are taken from mature cloned foetuses bred for the purpose of transplantation (already permitted by law in New Jersey)
- harvesting organs from patients with catastrophic cognitive impairments
- physician assisted suicide is routine and expected
- euthanasia is readily available, even for existential distress in teenagers, and has extended to the involuntary
- upon reaching a certain age assessments are made of usefulness to society
- doctors will be forced by law to participate in abortions, physician assisted suicide and euthanasia
- doctors will not be able to access training positions in obstetrics or anaesthesia unless they agree to participate in abortions
- doctors will not be able to access training positions in paediatrics, aged care, palliative care, or oncology unless they agree to euthanasia as part of that care

- doctors will become un-insurable by medical defence organizations unless they agree beforehand to participate in these things
- doctors will be de-registered and unable to practice if they refuse to perform such procedures that become legal
- clinical disciplines of paediatrics, O&G, anaesthesia, geriatrics, and oncology will be taken up only by doctors who are prepared to compromise on the value of life

Conscience

The exercise of conscience in medicine is everything. It has been truly said "The obligation to practice conscientiously is the obligation on which all other medical ethics are built."^{viii}

It underlies every aspect of good medical practice, to make good *patient care* our first concern and to *practice medicine safely and effectively*. It is conscience that must compel doctors to refuse to participate in treatments they believe to be un-ethical or that they consider not to be in the best interests of patients. To do otherwise would undermine the very foundation of good medicine

The liberty to not be involved or complicit in matters considered to be unethical or inadvisable is critical for individual doctors and for the integrity and independence of the medical profession as a whole. It is critical for individual doctors as it lies at the very heart of who we are – our integrity and self-identity. To leave our conscience at the door and just become service providers is to turn us into soulless doctors. For the medical profession to sacrifice conscience and be at the behest of a health bureaucracy concerned with service provision only is to turn us all into a soulless, mechanistic society. And if that phrase is familiar to you then you will recognise that it came from the lectures given by CSLewis at Durham University in 1943 titled as *The Abolition of Man*.

It is obvious that I consider infringement of conscience to be the greatest challenge facing modern medicine. Codes of conduct – *medical* conduct in particular – must transcend legality. Medical care must never be subject to degradation by governments in this age or any age to come.

What do we need to do?

This is a challenge to Medical Defence Organisations (MDOs) which to this point have simply decided not to provide cover if doctors break the law. But MDOs have a role in upholding good medical practice and indeed run educational exercises to encourage good medicine. What attitude will they take with PAS if this becomes legally enforceable? Will they only concern themselves with risk management in an ethical vacuum and therefore descend to being just another commercial insurance company?

If MDOs don't stay with us on this issue will they defend doctors charged with failing to perform compulsory euthanasia of the defective? It's a big challenge for MDOs.

This is a challenge to Medical Boards. Will the Medical Board of Victoria de-register doctors found guilty of failing to refer for abortion? And if so will they also deregister doctors who refuse physician assisted suicide under similar legislation? Will Medical Boards descend to just being legal arbiters of doctor service delivery subject to patient demand? I am under no illusion that Medical Boards will rise to our defence.

Will the AMA – despite needing to represent all doctors – defend a certain minimum standard of ethics in the face of government legalising various procedures and compelling participation?

This is also a challenge to the members of the Parliament of Victoria. Where were the members of integrity when this legislation was passed? Did you not realise the consequences for society, that you have crossed a bridge too far, that you are already on the other side of the Rubicon? Were there not enough of you or were you too suffering from battle fatigue?

This is also in a very real sense a challenge for our nation, for our people. It has been said that requiring men to violate and disregard their conscience results in the loss of virtue and undermines the basis for self-government. Surely we realise it was ethical failure that has caused our global financial crisis. Do

we expect an ethical conscience in our governments? Do we want Codes of Conduct that are of a high standard in business, in accounting, in our legal professions, in sport? I think we do and I think some recent events actually demonstrate and confirm that we – as an Australian people – do want such standards.

And when you go to a doctor, which doctor would you rather see? A doctor who will follow his conscience or one that will not?

Where do we go from here?

Will doctors in Victoria be charged? Will Catholic hospitals close their doors? If doctors are charged and deregistered will other doctors deregister themselves until this legislation is reversed? Will doctors have the courage to stand together and *be not afraid*? Will this government have the courage to admit it was wrong to pass this legislation as it stands? Or at least will the Liberal Party get their act together and push for removal of Section 8 on the grounds that it (the Liberal Party) stands for liberty? Will the federal Attorney-General or ultimately the High Court rule the Victorian law to be unconstitutional in light of Australia being a signatory to relevant international treaties? Will – at the very least – other state governments realise that they must not move in the same direction?

And when you go to a doctor, which doctor would you rather see? A doctor who will follow his conscience or one that leaves his conscience at the door?

Lachlan Dunjey. Melbourne 25 July 2009.

ⁱ ***Medicine With Morality* Vision statement:**

To preserve, in an age of rapid scientific and technological change, traditional medical ethics consistent with absolute values and to preserve the liberty of medical professionals holding these values to practise medicine according to their conscience.

Medicine With Morality was concerned with the application of evidence-based medicine in an ethical vacuum reducing human life to its biological function. We considered, for instance, that it is not enough to simply discuss the ‘best’ technique for euthanasia without consideration of its significance for the individual, the doctor-patient relationship, and the community.

Some may challenge our taking a stand saying “are you implying I’m unethical?” but if we have no position at all so as not to offend those of a different position, then we are inevitably drawn to the lowest common ethical denominator.

ⁱⁱ **8 Obligations of registered health practitioner who has conscientious objection**

(1) If a woman requests a registered health practitioner to advise on a proposed abortion, or to perform, direct, authorise or supervise an abortion for that woman, and the practitioner has a conscientious objection to abortion, the practitioner must—

(a) inform the woman that the practitioner has a conscientious objection to abortion; and
(b) **refer the woman to another registered health practitioner in the same regulated health profession who the practitioner knows does not have a conscientious objection to abortion.**

(2) Subsection (1) does not apply to a practitioner who is under a duty set out in subsection (3) or (4).

(3) **Despite any conscientious objection to abortion, a registered medical practitioner is under a duty to perform an abortion in an emergency where the abortion is necessary to preserve the life of the pregnant woman.**

(4) Despite any conscientious objection to abortion, a registered nurse is under a duty to assist a registered medical practitioner in performing an

abortion in an emergency where the abortion is necessary to preserve the life of the pregnant woman.

iii http://www.acog.org/from_home/publications/ethics/co385.pdf

iv Protection of Conscience Project <http://www.consciencelaws.org/index.htm>
Freedom 2 Care <http://www.freedom2care.org/>

v de Crespigny L and Savulescu J. Pregnant women with fetal abnormalities: the forgotten people in the abortion debate. MJA Vol 188 No.2: 21 January 2008

vi <http://www.emilyslist.org.au/news/editorial.asp?id=257>

“EMILY's List believes that this landmark legislation represents a vital shift in the way that our society respects women's ability to make sound decisions about their bodies and their lives. This legislation will mean that women in all areas of Victoria will be able to access safe, legal terminations free from persecution; and medical practitioners provide vital reproductive health services to women free from harassment” said Ms Hussein.

vii **Charter of Human Rights and Responsibilities Act**

2006 Act No. 43/2006 (Victoria)

9. Right to life

Every person has the right to life and has the right not to be arbitrarily deprived of life.

48. Savings provision

Nothing in this Charter affects any law applicable to abortion or child destruction, whether before or after the commencement of Part 2.

viii Dr Farr Curlin, MacLean Center for Clinical Medical Ethics, University of Chicago.