

Conscience Protections for Health Care Workers

NCBC Letter to U.S. Department of Health and Human Services

Dear Secretary Leavitt:

The National Catholic Bioethics Center wishes to provide comment on the proposed regulations, which it strongly supports, identified as 45 CFR Part 88; RIN 0991-AB48, “Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law.”

The National Catholic Bioethics Center (The Center) is a nonprofit research and educational institute committed to applying the moral teachings of the Catholic Church to ethical issues arising in health care and the life sciences. The Center provides consultations to institutions and individuals seeking its opinion on the appropriate application of Catholic moral teaching to these ethical issues. Many of our member agencies, as well as those for which we provide consultation, receive funding through the U.S. Department of Health and Human Services.

In fact, as the largest provider of non-governmental health care in the United States, the Catholic Church increasingly is facing statutory and regulatory discrimination as it tries to engage in its health care ministries. We are attaching an ever-growing list of state mandates that demonstrates the government-sponsored interference with Church ministries. This scenario is compounded by the increasing number of calls which we receive from health care providers who express fear that, due to their educational or employment activities, attempts will be made to have them violate their consciences because of these mandates. Based on a sampling of such inquiries over the last two years, we estimate we have received over one hundred seventy requests for consultation pertaining to cooperation in acts that would violate conscience, either individually or corporately.

The proposed regulations will reinforce and reaffirm existing federal laws which prohibit recipients of certain federal funds from coercing individuals in the health care field into participating in actions they find religiously or morally objectionable. It is our experience that the provisions of what are known as the “Church Amendments” (42 U.S.C. §300a-7), the Public Health Service Act §245 [42 U.S.C. §238n], and the Weldon Amendment (Consolidated Appropriations Act 2008, Pub. L. No. 110-161, Div. G, §508[d], 121 Stat. 1844, 2209 [Dec. 26, 2007]) need to be reinforced and reaffirmed. Combined, these provisions assist in assuring that the First Amendment protections of the free exercise of religion, not only for individuals but for Church sponsored ministries, are protected.

We are aware of the controversy caused by those refusing to accept the scientific definition of conception, that is, the fertilization of a human ovum with a human sperm,¹ and the well-established medical definition of an abortifacient as premature expulsion from the uterus of the products of conception.² The American College of Obstetricians and Gynecologists (ACOG), while redefining “conception” as implantation of the embryo in the mother’s uterus, admits in its publication on emergency contraception, that fertilization occurs before implantation: “During sex, the man ejaculates sperm into the vagina. The sperm travel up through the cervix and into the fallopian tubes. If a sperm meets an egg in the fallopian tube, fertilization—union of egg and sperm—can occur. The fertilized egg moves down the fallopian tube to the uterus. It then attaches to the uterus and grows into a fetus.”³ Furthermore, ACOG describes emergency contraceptive mechanisms that can prevent implantation: “The IUD [intrauterine device] can be used as emergency contraception. It works best if inserted within 5 days of having unprotected sex. The presence of the IUD prevents the fertilized egg from attaching to the wall of the uterus.”⁴ Frequently it is the existence of a mandate to cooperate with abortifacient procedures that generates inquiries to The Center pertaining to conscience violations. In fact, the attached table, “State Contraceptive Mandates” [www.ncbcenter.org/Mandated-Procedures.pdf] demonstrates the breadth of government mandates on health care workers and agencies to participate in abortifacient procedures. Of the thirty-five states that mandate that employee prescription plans offer contraceptives, all but one state mandate include abortifacients. Furthermore, some of the more recently publicized violations of conscience concern both pharmacists and nurses refusing to dispense/administer abortifacients.^{5,6}

¹American Medical Association, *American Medical Association Complete Medical Encyclopedia* (American Medical Association, October 14, 2003), 392.

²Harvey Marcovitch, *Black’s Medical Dictionary* (London: A&C Black, 41st ed., 2006), 156.

³ACOG, “Emergency Contraception,” ACOG Educational Pamphlet AP 114. Emphasis removed.

⁴*Ibid.*

⁵*Lemly v. St. Tammany Parish Hospital District No. 1* (The 22nd Judicial District Court for the Parish of St. Tammany, LA, June 2005).

⁶*Vanderstand v. Wal-Mart Stores, Inc.* (Illinois: US District Court, August, 2003).

It is our understanding that the original draft of the regulations contained a definition of abortion that would address such conscience violations: “any of the various procedures—including the prescription, dispensing and administration of any drug or the performance of any procedure or any other action—that results in the termination of life of a human being in utero between conception and natural birth, whether before or after implantation.” Such language would be protective of the consciences of those involved in the aforementioned, or similar cases; and without such language, health care providers inevitably will face costly legal challenges in their attempts to protect their rights of conscience.

We note that on page 36 of the draft regulations there is an attempt to secure the conscience rights that the third and fourth conscience provisions of the Church Amendments were promulgated to protect [42 U.S.C. §300a-7(c)(2) and 7(d)]:

(d) Entities to whom this subsection 88.4(d) applies shall not:

(1) require any individual to perform or assist in the performance of any part of a health service program or research activity funded by the Department if such service or activity would be contrary to his religious beliefs or moral convictions.

(2) discriminate in the employment, promotion, termination, or the extension of staff or other privileges to any physician or other health care personnel because he performed, assisted in the performance, refused to perform, or refused to assist in the performance of any lawful health service or research activity on the grounds that his performance or assistance in performance of such service or activity would be contrary to his religious beliefs or moral convictions, *or because of the religious beliefs or moral convictions concerning such activity themselves* (emphasis added).

While we welcome this language and see it as consistent with the Church Amendments, we would suggest that there be a broad definition of “any lawful health service or research activity.” Increasingly, states, most notably at this time the State of Washington, are considering legalizing assisted suicide, similar to what has occurred in Oregon.⁷ Also, there are examples of individuals being forced to violate their consciences in transgendering surgery and assisted reproductive technologies.⁸

Furthermore, the draft regulation material (SUPPLEMENTARY INFORMATION: I. Background, page 4) states that “In addition, there is a provision that prohibits the federal governments and state and local governments from discriminating against individual and *institutional providers* (emphasis added) who refuse, among other things, to receive training in abortions, require or provide such training, perform abortions, or refer for or make arrangements for abortions or training in abortions.” However, the draft regulations, and particularly the definition of “individual,” need to

⁷Secretary of State, Washington, “Initiative 1000,” http://www.secstate.wa.gov/office/osos_news.aspx?i=BNgVfn77CWbU8nicVhJ0Ng%3D%3D.

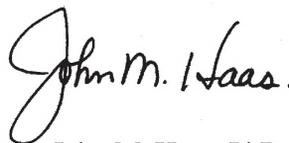
⁸*North Coast Women's Care Medical Group, Inc. v. San Diego County Superior Court*, S142892, Supreme Court of California, August 18, 2008.

be expanded to include institutional providers (Section 88.2 Definitions, *Individual*). Catholic sponsored institutions constitute the largest number of non-governmental health care institutions in the country. Just as individuals can be penalized, legally, for following their consciences, so can corporate ministries.

Again, as the largest provider of non-governmental health care in this country, we are acutely aware of the shortages of qualified health care workers, as well as the need to provide health care to diverse populations. In fact, there is no larger provider of uncompensated health care in this country than the Catholic Church. The Church sees the needs of diverse and vulnerable populations, and ministers to them. To address these needs, health care workers from all backgrounds are required. The protection of conscience ensures a vibrant pluralism in the delivery of health care. Not protecting consciences implicitly endorses a monolithic view of health care delivery in a setting where there is legitimate moral disagreement. By not ensuring that consciences are protected, the State effectively takes a position that health care providers may not question laws, even unjust ones. By insisting that those who are willing to violate their consciences in the delivery of health care are the only persons who should enter the health care field one contributes to the creation of a health care delivery system of professionals who blindly follow directives rather than conscience, putting society at risk. Such an authoritarian environment is what has allowed and continues to allow the catastrophic violations of human life and dignity witnessed in oppressive governmental regimes abroad.

The people of the United States deserve, and require, a reasonable, thinking, caring and conscience-driven health care force and faith-based ministries, that will not be subject to coercive measures which interfere in their delivery of health care. We strongly support the adoption of the proposed regulations on conscience protection, with the aforementioned modifications, and see them as essential to the continued delivery of quality health care in this country.

Sincerely yours,

A handwritten signature in black ink that reads "John M. Haas." The signature is written in a cursive style with a large, looped initial "J".

John M. Haas, PhD, STL
President

National Catholic Bioethics Center