



## Conscientious objection... a pharmacist's perspective

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### Introduction

Pharmacists are also human! Every individual pharmacist has his own religious beliefs, personal values, cultural traditions, needs and concerns, and perhaps even fears and phobias. According to the New Dictionary of Medical Ethics<sup>4</sup>, conscientious objection is “to object in principle to a legally required or permitted practice”.

This article explores the rights and responsibilities of pharmacists to practise pharmaceutical care according to the dictates of their conscience but without allowing their own personal convictions to jeopardize the care of the patient.

### What does the law say? Human Rights... whose rights, who's right?

In order to protect the rights of all people in our country, and to affirm the values of human dignity, equality and freedom, the South African constitution includes a Bill of Rights:

#### Rights

7. (1) *This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.*

For the purposes of this article, we consider in more detail, the obligations of pharmacists in respecting and protecting patients' right to healthcare whilst also acknowledging the pharmacist's right to practice his profession with integrity in accordance with his personal right to freedom of conscience.

Consider, from a pharmacy perspective, the following sections in the Bill of Rights:

#### Health care, food, water and social security

27. (1) *Everyone has the right to have access to—*  
(a) *health care services, including reproductive health care;*

#### Freedom of religion, belief and opinion

15. (1) *Everyone has the right to freedom of conscience, religion, thought, belief and opinion.*

#### Freedom of trade, occupation and profession

22. *Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.*

So, in accordance with the Bill of Rights, pharmacists must, in practice, also take cognizance of certain foundational rights affecting healthcare and patients including the right to equality and non-discrimination, dignity, life, privacy, access to information, lawful, reasonable and procedurally fair administrative actions.

The Constitution leaves it to subordinate legislation to spell out the details of these rights. So, the National Health Act provides the overarching legislative framework for the delivery of quality healthcare for all in South Africa. The objects of the National Health Act are to regulate national health by, amongst others—

- setting out the rights and duties of health care providers, health workers, health establishments and users; and
- protecting, respecting, promoting and fulfilling the rights of the people of South Africa to the progressive realization of the constitutional right of access to health care services, including reproductive health care.

The Patients' Rights Charter was proclaimed as a common standard for achieving the realization of the right of access to health care services. All pharmacies are required to have the charter displayed in clear view of the public.

However, no right is absolute as can be seen in Section 36 of the Bill of Rights:

#### Limitation of rights

36. (1) *The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—*

- *the nature of the right;*
- *the importance of the purpose of the limitation;*
- *the nature and extent of the limitation;*
- *the relation between the limitation and its purpose; and less restrictive means to achieve the purpose.*

#### For example:

Whilst patients have the right to access medicine as part of their right to healthcare, this access is limited in law by the conditions specified in Section 22A of the Medicines and Related Substances Act.

Similarly, whilst *pharmacists* have the right to choose and practice their profession in terms of Section 22 of the Bill of Rights, they may only do so within all the relevant laws pertaining to pharmacy practice. More specifically, pharmacists are required by Regulation to practise *pharmaceutical care* in accordance with Pharmacy Act Regulations, Good Pharmacy Practice Rules (GPP), the Code of Conduct and the Ethical Rules.

**For example:**

In terms of respecting the patient's right to privacy, the pharmacist is obliged to practise in accordance with the standards set out for the physical layout of a pharmacy, GPP Rules and SOPs on confidentiality, record keeping and section 1.3 of the Code of Conduct, *Confidentiality*, as well as the Pharmacist's Oath and all other relevant legislation such as the POPI Act, etc.

**What is the right thing to do?**

*Moral authority comes from following universal and timeless principles like honesty, integrity, treating people with respect. ....Stephen Covey*

In exercising their Constitutional Rights to freedom of religion, belief and opinion, as specified in Section 15(1) of the Bill of Rights, pharmacists should do so with integrity. *Moral integrity* requires one not only to live up to your own beliefs but also to recognize the rights of others, who may hold beliefs different to yours, to do so.

Individuals make the choice to enter the profession of pharmacy voluntarily and to accept the responsibilities of the profession. This includes a voluntary undertaking to adhere to the seven tenets of professionalism for pharmacists namely, altruism, respect for others, honesty and integrity, accountability, commitment to excellence, professional presence and professional stewardship. These principles are universal and transcend all cultural and religious differences. Irrespective of your own personal values and beliefs, the patients you serve can quite correctly, expect you, as a pharmacist to conduct yourself and practice in accordance with these seven tenets of professionalism and to do so with *professional integrity*.

*Professional integrity* requires a pharmacist to practice his profession legally within all the laws pertaining to pharmacy, the practice standards set out in Regulations and GPP, and the ethical requirements as set out in the Code of Conduct and the Ethical Rules.

Pharmacists enter the profession primarily to make a difference in the lives of patients and are morally obliged to put the patients' best interest first. They are uniquely trained and charged by Regulation to provide *pharmaceutical care* and it is this that distinguishes them from other healthcare professionals.

Bear in mind your commitment to the first principle of the Code of Conduct, "*Well-being of the patient*". Irrespective of your personal values and beliefs, it will be your professional responsibility to ensure that you practice your profession with integrity to ensure that the patient receives the pharmaceutical care required. Furthermore, this must be done with care, respect and without prejudice. Remember too that you will be held professionally and personally accountable for ensuring

that the patient receives the appropriate quality pharmaceutical care he deserves. It is your responsibility to ensure that the pharmaceutical care of the patient is not compromised because of your personal values and beliefs.

There is a positive obligation on the pharmacist to ensure access when exercising the right to conscientious objection. Remember too that 27 (3) of the Bill of Rights specifies:

*No one may be refused emergency medical treatment*

**For example:**

Consider the extensive GPP rules related to emergency post-coital contraception (EPC), which state:

*"2.26.5 Professional and ethical responsibility of pharmacists in the provision of EPC ...*

*(j) pharmacists who do not wish to provide EPC treatment for personal reasons should maintain objectivity and remain professional when dealing with patients. In this case, patients must be referred to an alternate source of EPC;*

*(k) if the patient questions the pharmacist as to why he or she will not be providing the product or service personally, the pharmacist should answer in a manner that does not make the patient feel uncomfortable; and*

*(l) alternate sources for EPC might include referral to one or more pre-arranged options such as:*

*(i) another pharmacist in the same pharmacy;*

*(ii) another pharmacy in the vicinity;*

*(iii) a medical practitioner; and*

*(vi) a nearby hospital, community health centre, primary health care clinic or reproductive health clinic."*

**Pharmacists are also human!**

*Personal integrity* involves a commitment to deep moral values. Respect the fact that pharmacists' religion, personal values and beliefs are central to their lives. Accept that these must be taken into account by employers, colleagues and patients in the course of providing pharmacy services and may influence the pharmacist's daily professional practice. This may include, for example, services related to:

- Medical procedures, abortion, blood transfusion, organ donation and transplants
- Sexual health, contraception, fertility medicine, EPC, hormonal therapies
- Dietary requirements
- Mental health and well-being, and substance abuse
- Religious practices, fasting, abstinence from alcohol, pork products
- Fears and phobias e.g. haemophobia, trypanophobia

If you, as a pharmacist, have a valid reason to conscientiously object to providing any particular professional service expected of you, your first obligation should be to address the matter in a professional manner with honesty and integrity. Whilst being true to the dictates of your conscience, recognize and acknowledge your own values and beliefs but do not impose them on other people. Whilst you could

expect public policy, colleagues and employers to recognize and cooperate in accommodating your conscientious objection to perform certain professional tasks, understand that this can only be done if the patients' rights and interests are not compromised.

### What to do about it?

#### **To thine own self be true!**

*Professional integrity* requires acknowledgement of your own beliefs, and personal values but you must practice in accordance with the laws of equality, human rights and the rights of the patient to pharmaceutical care. This requires you to consider carefully how and where you could practice your chosen profession in line with your own beliefs and values without compromising patient care.

Factors to be considered include:

- the location, environment and working hours
- the range and type of services the pharmacy provides
- will you be working alone or are their colleagues who will be willing to provide the services which you feel you are unable to?
- are there alternative service providers with suitable opening hours to which you could refer patients to receive the professional service without delay, inconvenience or embarrassment?

#### **Face reality and deal with it!**

Recognize, value and accept, without prejudice, the reality of the diversity of the population of our country with its many different cultural, language, ethnic, and religious groups. Be aware of and learn about these cultural, social and religious factors amongst both your working colleagues and the patient community you serve so that you can practice patient-centred, individualised care with sensitivity and understanding. Steps to be taken include:

- working closely with the patient, his care-giver or relative to enable him to make informed decisions about his healthcare/service needs
- understand the patient's needs and any barriers they may face
- identify options available and make sure the patient fully understands these
- engage the patient in open discussions about their personal beliefs and values related to their care: for example, by giving advice on taking medicines during periods of fasting

Similarly, assist your colleagues if necessary, by, *for example*:

- offering to provide a particular service e.g. emergency post-coital contraception, which your colleague may not want to do because of his personal beliefs
- working overtime to allow him to observe certain religious holy days

#### **Take responsibility!**

If a pharmacist is unwilling to provide certain services, his responsibility is to exercise pharmaceutical care in his decision-making and make provision for a patient to have alternative access to the service they require. This must be done without judgement, or imposition of his own personal beliefs, or values on the patient. Referral to an alternative service must be clinically appropriate, done in a timely manner and without hindrance.

Communication with patients must:

- be done professionally, with respect, sensitivity, privacy and confidentiality
- be adapted to meet the needs of the patient
- be done with appropriate body language, tone of voice and words

#### **Establish reciprocal, respectful, professional working relationships!**

Owners of pharmacies are legally required to ensure that their pharmacies operate in compliance with all applicable legislation including both labour laws (as employers) and all laws pertaining to the practise of pharmacy (as providers of pharmacy services). Importantly, they must also undertake to comply with the standards of practice specified in Regulations and Good Pharmacy Practice Rules (see Reg. 7. of Regulations relating to the Ownership and Licencing of Pharmacies). This includes the appointment of a suitable Responsible Pharmacist and professional team to provide pharmaceutical care relevant to the needs of the population to be served by the pharmacy.

The responsibilities of employers towards professional staff include:

- treating staff with dignity and respect
- being sensitive to their personal values and beliefs and not to unfairly discriminate against them
- have appropriate and legally compliant governance, staff training and management systems in place to ensure and that patients are treated with sensitivity and that they receive continuous pharmaceutical care

#### **For example:**

- It would be appropriate to schedule work hours/days to accommodate staff who wish to be off duty on certain religious holidays
- Additional training may be needed to ensure that staff understand the special needs of patients who have different values and beliefs

*Professional integrity* requires employee pharmacists to declare their conscientious objection to providing any particular service. This should be done in open and honest discussion with the employer before any contract of employment is entered into. The employer, in turn, could rightfully ask the potential employee pharmacist whether they have any such conscientious objections which may impact on their ability to render the standard of professional care expected. Any such agreement should be included in the employment contract. The employee/employer relationship should be open and one of mutual respect so that if, during the course of employment new situations arise with which the employee pharmacist is uncomfortable, the problem may be resolved amicably.

Remember, however, that if a particular task can genuinely be described as an "inherent job requirement" (meaning, as interpreted by the Labour Courts, as "absolutely essential" for the efficient and effective performance of the overall job of pharmacist), and you conscientiously object to performing that task, the employer is within his rights to terminate your services as a pharmacist without committing unfair discrimination. This is because the employer is respecting your right to your conscience and beliefs, but needs a pharmacist to perform the

task to which you object in order to provide the patient with his right to pharmaceutical care, and to provide employment for others in the organisation.

## Conclusion

*Conscientious objection is the right of an individual to refuse to participate in an activity that he or she considers incompatible with his or her moral, religious, philosophical, or ethical beliefs.* (International Covenant on Civil and Political Rights. G.A. Res. 1966;2200A(XXI))

Pharmacists wishing to exercise their right to conscientious objection should consider carefully the following statement made by the well-known and highly respected Constitutional Law expert, Pierre de Vos, in a paper titled *"Right vs Rights"*:

*"Just because you have a right to do something does not mean that it is right to do it."*

In exercising their own rights, pharmacists are always required to, firstly, consider whether in doing so, they will not jeopardise the rights of the patient to the pharmaceutical care which they are entitled to.

## Disclaimer

This document is a guideline and does not constitute legal advice or reflect official policy of the Pharmaceutical Society of SA. Any person

wishing to implement proposals made in this document, must do so in accordance with the requirements of the Pharmacy Act 53 of 1974, Medicines & Related Substances Act 101 of 1965 and all other relevant legislation, and, if necessary, should seek legal advice to ensure compliance.

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