Legislating and regulating conscientious objection to abortion: do we have the balance right in Victoria?

Louise Keogh, BSc(Hons), MA, PhD
A/Prof, Health Sociology
Melbourne School of Population and Global Health

Background – the moderate position, or conventional compromise

Abortion Law Reform Act, 2008

The conscientious objection clause (Section 8)

Registered health practitioners must inform the woman that the practitioner has a conscientious objection to abortion; and 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.*

[Health practitioners must perform an abortion if it is necessary to save the woman's life]

Ethical position

- The ‘moderate position’ (Minerva 2015)
  - Allows scope for CO
  - But only in ways that do not undermine women’s right to access services
- CO is only legitimate when it does not impose an unreasonable burden on the patient (Brock 2008)
  - delay
  - distress
  - health consequences

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Guidelines

WORLD MEDICAL ASSOCIATION

WMA STATEMENT ON MEDICALLY-INDICATED TE PREGNANCY

Adopted by the 24th World Medical Assembly, Oslo, Norway, August 1970 and amended by the 35th World Medical Assembly, Venice, Italy, October 1983, the 57th WMA General Assembly, Pilanesberg, South Africa, October 2006, and the 69th WMA General Assembly, Reykjavik, Iceland, October 2018

Preamble

1. Medically-indicated termination of pregnancy refers only to interruption of pregn in accordance with principles of evidence-based medicine and good clinical practi not include or imply any views on termination of pregnancy carried out for any reason other than medical indication.
2. Termination of pregnancy is a medical matter between the patient and the physician. Attitudes toward termination of pregnancy are a matter of individual conviction and conscience that should be respected.

FIGO
INTERNATIONAL FEDERATION OF GYNECOLOGY & OBSTETRICS

Resolution on 'Conscientious Objection' (Kuala Lumpur, 2006)

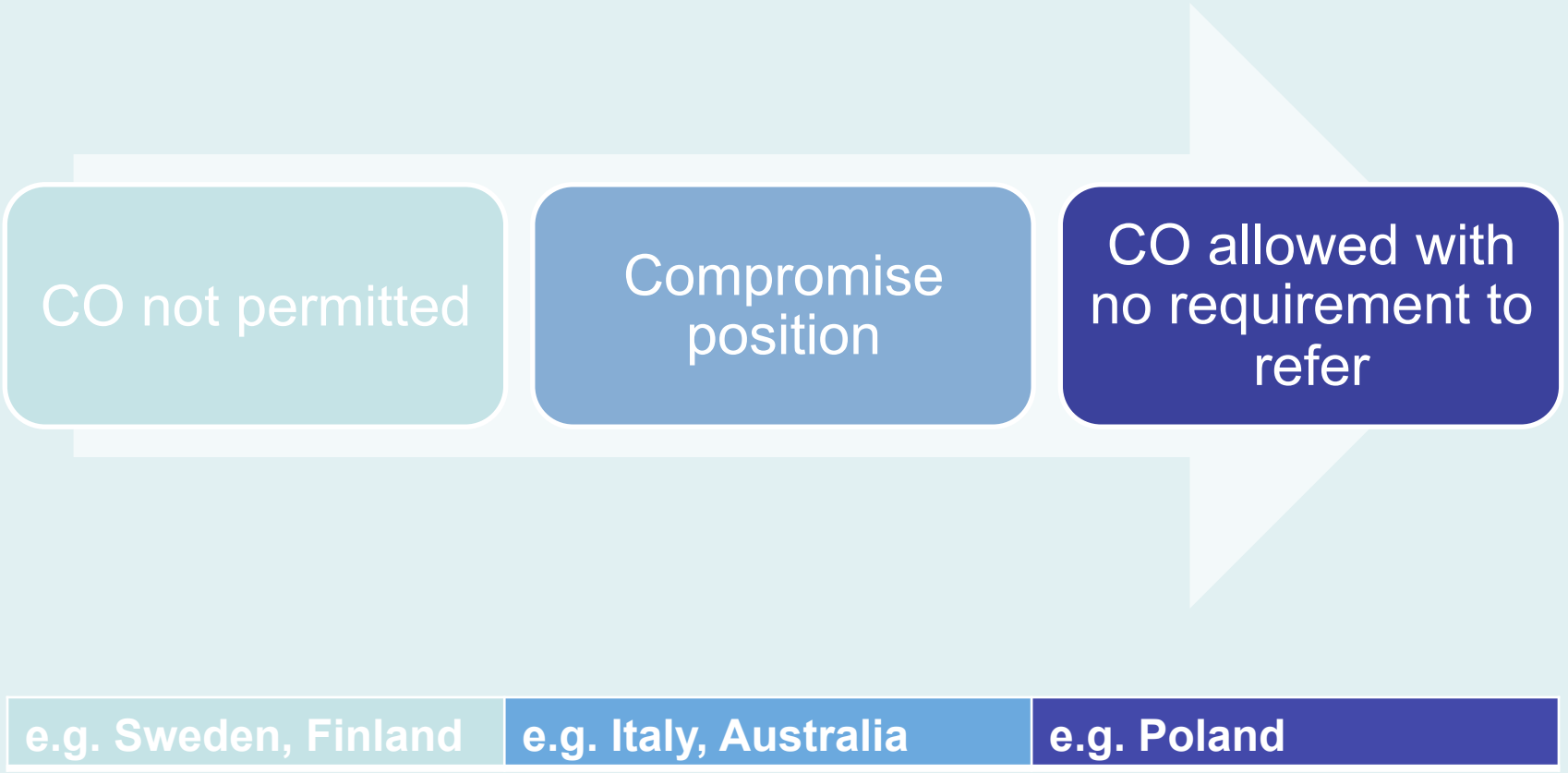
(Reviewed and approved by the FIGO Executive Board, September 2005, and adopted by the FIGO General Assembly on 7 November 2006)

· Recognizing that physicians have an ethical obligation, at all times, to provide benefit and prevent harm for every patient for whom they care.

'Refer … to other practitioners who do not object'

'They may withdraw while ensuring the continuity of medical care by a qualified colleague.'

Spectrum of laws relating to CO



Differences arise due to the rights of women being weighted differently compared to the rights of health professionals

Globally - controversy regarding CO as laws are liberalised

THE IRISH TIMES

Mon, Dec 3, 2018

NEWS | SPORT | BUSINESS | OPINION | LIFE & STYLE | CULTURE

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At least 40 GPs walk out of meeting on abortion services

Doctors have concerns over issue of conscientious objection and workload on others

Sun, Dec 2, 2018, 14:02 | Updated: Sun, Dec 2, 2018, 17:07

Paul Cullen

Minister for Health Simon Harris says in the context of abortion services a 'conscientious objection is that you don't have to be involved in a procedure'. Photograph: Collins

At least 40 GPs have walked out of an extraordinary general meeting of the Irish College of General Practitioners over the issue of conscientious objection to the provision of abortion services.

NEW ZEALAND

Doctors to fight new abortion law

3 Dec, 2018 5:00am | 8 minutes to read

One woman interviewed by the Herald says her feeling regarding her abortion is relief and "I know I'm not alone in that".

By: Claire Trevett
Deputy political editor, NZ Herald
claire.trevett@nzherald.co.nz
@CTrevettNZH

Group opposes any moves that erode rights in dealing with patients seeking terminations, writes Claire Trevett.

A group of doctors opposed to abortion say they will fight any moves in looming reforms to erode their rights to refuse to deal with patients wanting abortions. The issue of referring

Study 1

Study 1: Research question

Despite controversy, there is little research on CO in practice

- Rates of CO range from 15% of O&G trainees in Aus (De Costa *et al* 2010) to 70% of O&Gs in Italy (Bo *et al* 2015)
- Mixed views on referral - those opposed to abortion more likely to oppose referral (Curlin *et al* 2007)
- Evidence that a minority of health professionals are willing to mislead or deter patients seeking abortion e.g. 14% of primary care providers in US (Holt *et al* 2017)

We aimed to explore abortion experts' views on Section 8 of the Abortion Law Reform Act & their perceptions of how Section 8 has been implemented in Victoria

Study 1: Methodology

Qualitative design

- Purposively sampled Victorian experts in abortion provision (including snowball sampling)
- Part of a broader study about law reform and access to MTOP (Keogh *et al* 2017, Newton *et al* 2016, 2017)
- 19 Semi-structured interviews - face-to-face or telephone (15 female, wide range of services & professional roles)
- Thematic analysis – only data on CO analysed

Views of Section 8 (common)

A mechanism to ensure women's rights:

'Medicine should be about providing care for the patient not providing care for the doctor.' [8]

'Yeah I'm happy for people to be able to have a conscientious objection as long as they maintain their duty, which is you know getting people through pretty quickly, yeah.' [13]

Views of Section 8 (uncommon)

A mechanism to protect doctor's rights

'So I think people should be allowed to – if something is deeply against their conscience they should be allowed to not be involved, but they have to acknowledge it, b it and be able to I really do think t really important' [12]

There were mixed views on the importance of having CO enshrined in law

CO in practice

Perceptions of how section 8 implemented in medical practice

All participants thought - for the majority of doctors, adhering to the law common sense and effective

BUT

All participants could describe negative consequences related to the practice of CO (post 2008 law reform)

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Misuse of CO in Victoria (by doctors)

Doctors directly contravening the law by not referring	
Doctors attempting to delay women's access	
Doctors attempting to make women feel guilty	
Doctors objecting for reasons other than conscience	

Misuse of CO in Victoria (1)

Doctors directly contravening the law by not referring	*'Women tell us that GPs not only won't assist them but they won't refer them on either. We think there are problems enacting that law….' [1]*
Doctors attempting to delay women's access	
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Doctors attempting to delay women's access	*'Well we still get some patients coming in and saying "oh gee, I went to my doctor and he was not too helpful, and sent me on the run-around waiting for this ultrasound, and then come back and see me a week later and on and on…" [9]*
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Doctors attempting to make women feel guilty	*'The way it's done could be extremely damaging to someone who might ultimately easily access the service anyway.' [3]*
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Doctors attempting to make women feel guilty	*'The way it's done could be extremely damaging to someone who might ultimately easily access the service anyway.' [3]*
Doctors objecting for reasons other than conscience	*'You just say, "I'm not doing them." You don't have to discuss it or justify it…So what's happening here is not conscientious objection. It's just 'opt out'.' [12]*

Misuse of CO in Victoria (2)

Use of conscientious objection by those other than health professionals	
Telephone staff	
Pharmacists	
Institutions	
Political groups	

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Telephone staff	*Not an uncommon experience for me … to ring up Canberra to get authority under PBS to use the medication … not uncommon for the person on the other end of the phone …will just say "I will not have my hand in this process of you giving that medication to that woman." Now it wouldn't happen a lot, but I'd say it has happened about six times to me. [10]*
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Institutions	*"…I have a really strong objection to institutional opting out because there's nothing in the law about that and that's wrong" [12]*
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Institutions	*"…I have a really strong objection to institutional opting out because there's nothing in the law about that and that's wrong" [12]*
Political groups	*'It's seen as a focal point from the anti-abortionists, that this is something they can jump up and down about and say "oh no, well we can't refer somebody for an abortion." But that's not what it's requiring you to do, it's requiring you to send them to somebody who will discuss all the alternatives' [19]*

Study 2

Study 2: Background, aims and method

- Following decriminalisation in 2008, medication abortion availability from 2013 (including teleabortion), hopes for increased access in rural areas
- Yet, Women's Health Grampians concerned about services for women facing unintended pregnancy in their catchment

- Aim: to explore GP and nurse views of the services *in parts of* the Grampians region
- Mixed method study, conducted in 2017
  - 23 of 84 GPs completed a short survey (27%)
  - 5 GPs and 3 practice nurses took part in follow-up interview

Women's Health Grampians

Grampians Region:
11 local government areas
3 primary care partnerships
across 48,112 kms^2
communities range from
major growth urban centres
to isolated rural communities

Key findings - services

- GPs reported seeing 3 women per year with unintended pregnancy (range 0-25)
- When women present with an unintended pregnancy, GPs were much more likely to report ‘always’ discussing:
  - future contraception (87%) and
  - pregnancy options counselling (81%) than
  - STOP (41%),
  - MTOP (27%), or
  - Tele-abortion (0%)

Key findings – Conscientious Objection

- (15/23) or 65% of GPs completing the survey were trained overseas
- (8/21) or 38% of GPs sometimes or always refer due to a conscientious objection
- (8/13) or 62% of overseas trained doctors sometimes or always refer due to a conscientious objection
- (8/8) or 100% of Australian trained GPs ‘sometimes’ or ‘always’ discuss STOP
- (7/8) or 88% of Australian trained GPs never refer to a colleague due to a conscientious objection

Summary data conscientious objection

How often do GPs refer women to a colleague because of a CO?					
Training	**Never**	**Rarely**	**Sometimes**	**Always**	**TOTAL**
Australia (n=8)	7(88%)	1(13%)	0(0%)	0(0%)	8
Overseas (n=15)	3(23%)	2(15%)	2(15%)	6(46%)	13*

* 2 missing values

One participant (male, O/S trained)

- Rarely discusses pregnancy options counselling,
- Rarely discusses STOP or MTOP
- Never refers to a colleague due to a conscientious objection

Qualitative interviews

The participants (5 GPs, 3 Practice nurses) were positioned differently with respect to unintended pregnancy in the Grampians region, so were grouped according to position;

- The conscientious objectors
- The would-be MTOP providers
- The city doctor
- The practice nurses

The conscientious objectors

- ***2 Males, aged 40-60, Christian, in region 10-25 yrs***

Rohan refers women seeking abortion to another GP at his clinic who does not hold a CO, he is comfortable to abide by Section 8, and to discuss contraception, safe sex, STIs. Not aware of MTOP

I'm personally not comfortable to refer to an abortion clinic … if they want an abortion, I ask one of my colleagues, so they see someone else.

Robert does refer women to an abortion service after seeing them twice. Aware of MTOP in Ballarat. Chooses not to offer MTOP.

Both myself and the hospital obstetrician have an ethical issue with TOP… it's an ethical issue, not a procedural issue if you know what I mean?

Conclusion

- Minerva (2017) calls for a 'not so moderate approach' to address the harm currently being caused by CO
- We need a better mechanism for ensuring women's access to legal services
- AND for protecting health professionals from genuine distress
- Balance is currently not satisfactory
  - CO claimed too broadly, shielded from scrutiny
  - Access not being ensured, evidence of harm to patients

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Study 1

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