

September 12, 2008

Dear Members of the President's Council on Bioethics,

This letter represents the combined request of over 2000 members of the American Association of Pro-life Obstetricians and Gynecologists to the Council on Bioethics to consider writing an opinion on three ethical questions pertaining to the rights of conscience of health care providers:

1. Restriction of the right of conscientious refusal to perform or refer for abortions
2. The use of the power of a licensing board to discriminate against physicians who do not comply with a controversial ethical position.
3. The use of flawed and biased "ethical analysis" as the basis for judgment of health care providers' ethical character.

1. Restriction of the right of conscientious refusal to perform or refer for abortions.

AAPLOG is one of the largest special interest groups within the American College of Obstetrics and Gynecology (ACOG), but we stand opposed to the pro abortion activism of the ACOG. The pressure on pro-life physicians within ACOG to perform or refer for abortions has been longstanding, but only recently has emerged as a threat to remove pro-life physicians from practice. AAPLOG is writing to request the analysis of the President's Council on Bioethics of this issue.

As you are probably already aware:

In November 2007, a position statement of The Committee on Ethics of the American College of Obstetricians and Gynecologists (ACOG), "The Limits of Conscientious Refusal in Reproductive Medicine"¹ declared that:

- a. **Pro-life physicians must refer for abortion:** "Physicians...have the duty to refer patients in a timely manner to other providers if they do not feel they can in conscience provide the standard reproductive service that patients request."
- b. **Patient autonomy trumps physicians' conscience:** Physicians may not exercise their right of conscience if that might "constitute an imposition of religious or moral beliefs on patients."
- c. **Conscience amounts to a subjective feeling:** "An appeal to conscience would express a sentiment such as 'If I were to do 'x,' I could not live with myself / I would hate myself, I wouldn't be able to sleep at night."
- d. **Pro-life physicians should relocate to refer patients to nearby abortionists:** "Providers with moral or religious objections should ... practice in proximity to individuals who do not share their views..."

¹ http://www.acog.org/from_home/publications/ethics/co385.pdf

The American Board of Obstetrics and Gynecology, (ABOG) which is the professional body responsible for "board certification" of obstetricians and gynecologists throughout the U.S. followed up on the American College of Obstetrics and Gynecology (ACOG) missive within 6 weeks. Effective as of Jan 1, 2008, the ABOG 2008 Maintenance of Certification Bulletin² (MOC) decreed that physicians may now **lose their certification** (without which ob/gyn physicians may not obtain hospital privileges) for "violation of ABOG or ACOG rules and/or *ethics principles....*"

The pertinent parts of the ABOG MOC are as follows:

1. The sections immediately prior to page 10 give the possible outcomes for an ob/gyn seeking recertification, of which one outcome is revocation of certification. Page 10 provides detail as follows:

"Page 10 Section 5. Revoked Certificate

- a. An individual has had their Diplomate status revoked by the American Board of Obstetrics and Gynecology for cause.**
- b. Cause in this case may be due to, but is not limited to, licensure revocation by any State Board of Medical Examiners, violation of ABOG or ACOG rules and/or ethics principles or felony convictions.**

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The MOC process will commence on Jan 1, 2008. Recertification will NOT be available after this date. This means that Diplomats with time-limited certificates that expire in 2008 and thereafter must enter the MOC Process in January of the year their certification expires. This is a transitional period for the former ABC recertification process for time limited certificates. The ABC process has become MOC Part II-ABC.

Page 26, Third paragraph

"If a physician is involved in litigation or investigation regarding ethical or moral issues, the individual will not be scheduled for examination and the application will be re-examined. The Credentials Committee usually will defer such a decision for one year to gain further information."

.....

It is of interest that the wording for the last at least seven years (2000 to 2007 MOC bulletins) of the cause for revocation due to ethical breach used to read:

"the physician shall have violated any of "The Ethical Considerations in the Practice of Obstetrics and Gynecology" currently published by the American College of Obstetricians and Gynecologists and adhered to by the Board"

² <http://www.abog.org/pdf/MOC2008.pdf>

But, the 2008 MOC Bulletin, issued just six weeks after the ACOG Ethics Statement #385, changed the wording to include revocation for

"violation of ABOG or ACOG rules and/or ethics principles"

This new wording includes quite a bit of slippage, since it fails to refer to a published document, but rather to refer to a vague "rules or ethics principles"; a sort of "living document" interpretation which predicates the board certification of thousands of ob/gyns on the whims of the "ACOG Ethics Committee", a body of a handful of ob/gyns without any particular mandate for representing the views of the ACOG membership. In fact, ACOG members have never been polled for our views on this subject.

Looking at the ACOG Ethics Committee Statement #385 combined with the new Maintenance of Certification (MOC) Bulletin which is the official rules of how to maintain board certification, it is clear that these documents have the potential to force ob/gyns who will not perform or refer for abortions out of the practice of obstetrics and gynecology. When summed together, these documents provide legal grounds for revoking the certification of any physician who refuses to perform or refer for abortions.

This has huge implications, since most hospitals use board certification as a proxy for competence. To obtain hospital privileges, most physicians fill out a questionnaire which asks: "Have you ever been removed from a professional society or had your board certification revoked?" A "yes" to this question almost always results in denial of hospital privileges, and therefore loss of livelihood.

A second aspect to gutting pro-life ob/gyns from the medical profession is the impact on patients. The practice of obstetrics and gynecology is unique within the medical profession, involving a tremendous degree of trust in the judgment of the ob/gyn on the part of the woman patient. Many of our patients come to us because they know we value the life of their unborn child as they do. Most of our patients are fully aware of, and share our pro-life worldviews. To make it impossible for pro-life ob/gyns to maintain board certification will be to leave a large number of pro-life women without obstetrical care.

Further, it is our very commitment to the lives of patients that causes many of our members to serve in underserved areas. The same ethical principles which cause us to work for the safety and health of the unborn child also cause many of us to serve in places which are not physically or financially attractive: because it's the right thing to do.

AAPLOG would appreciate from the President's Council an ethical analysis which takes into account all of these aspects of the current actions of ABOG and ACOG.

2. The use of the power of a licensing board to pressure physicians into complying with a controversial ethical position.

The second ethical question we would like the Bioethics Committee to address goes beyond the narrow issue of abortion to wider bioethical issues in health care:

Does a professional society have the power to bind the ethics of ALL PHYSICIANS, including those physicians who have chosen not to be members of that professional society specifically because that society does not represent their own ethical position?

Putting the question in other words: it is one thing for ACOG to say "If you want to be a part of the ACOG, you must adhere to these principles." It is quite another thing for the American Board of Obstetrics and Gynecology (ABOG) to say to ob/gyns (who have chosen not to be part of ACOG because of ACOG's rabid pro abortion activism) "You must comply with ACOG ethics or you are not competent to practice obstetrics and gynecology". Does a voluntarily composed professional society (ACOG) have the power to bind the ethics of non-members by its influence on the professional certifying body (ABOG)

And, more importantly, should a certifying body like ABOG, which is entrusted nationwide to decide the medical competence of ob/gyns use compliance with the controversial ethical statements of another voluntary professional association (ACOG) as one of the criteria for competence, especially when that controversial ethical position contradicts Hippocratic medical tradition in force for the last 2000 years at least, as well as the tradition of established Western medical ethics for the last 1900 years?

By making compliance with controversial ACOG ethical principles grounds for revocation of board certification, ABOG infringes the ability of a physician to the free exercise of her/his trade, an implication not unnoticed by Mr. Leavitt of HHS. (His letter attached in e-copy). ABOG is also discriminating against physicians not on the basis of medical competence, but on the basis of worldview. It is from just such abuses of power that the proposed HHS regulations will protect health care workers.

3. The use of flawed and biased "ethical analysis" as the basis for judgment of a health care provider's ethical character

The recent article by Chervenak³ well outlines the stance of the ABOG and ACOG regarding abortion referrals:

"Referral of patients for termination of pregnancy by physicians morally opposed to the procedure is ethically controversial, with polarized positions taken by physician organizations. ... Direct referral is beneficence based and requires the referring physician to ensure that the referral occurs. Indirect referral is autonomy based with a beneficence based component that requires that the physician provide information to the patient about health care organizations that will provide competent care. ... Conscience based objections to direct referral have merit; conscience based objections to indirect referral do not."

AAPLOG would maintain that it is not "beneficent" to the patient to aid her obtaining a procedure which will prove lethal to her unborn child, and increase her own risk of suicide, major depression, and preterm birth in subsequent pregnancies. The whole

³ Chervenak, FA, McCullough LB, "The ethics of direct and indirect referral for termination of pregnancy" Am J Obstet Gynecol 2008; 199:232.e1-232.e3.

"beneficence" argument rests on the assumption that abortion is "medical care", which it is not. Abortion does not cure any medical illness. Abortion is an attempt at a surgical solution to a social problem. The mere fact that a patient requests a procedure does not make the performance of that procedure necessarily beneficent.

In fact, there are many instances in medicine where a physician will refuse something that a patient requests. For example, if a patient requests prescriptions for narcotic pain medicine, and in the physicians' judgment, that pain medicine is not indicated, and is in fact harmful, it would be unethical to simply give the patient a prescription simply from the "beneficence" of fulfilling her request. It would also be unethical to refer that patient to a physician willing to give her narcotic pain medications without an indication. So, the perceived "beneficence" rests on the judgment of the physician as to whether or not the procedure will do the patient good or harm.

In the case of abortion, there is another ethical consideration, and that is the ethical duty of the obstetrician gynecologist to first do no harm, and then to do good to both of her/his patients: the fetus and the mother. In the case of abortion there is the aspect of patient abandonment which the physician commits when she/he refers for or performs abortions. There is a need for a thorough ethical analysis on this aspect as well.

AAPLOG would greatly appreciate the President's Council analysis of the attached e-document "Ethical analysis of ACOG Ethics Committee #385". This was not written by AAPLOG, but contains an ethical critique with which we agree.

In closing, we are including a portion of one of the letters written from an AAPLOG member to the President of ACOG.

**RE: "The Limits of Conscientious Refusal in Reproductive
Medicine"
ACOG Committee Opinion #385, November 2007**

Dear Dr. Hale,

I have just reviewed the current committee opinion published by the ACOG ethics committee entitled "The Limits of Conscientious Refusal in Reproductive Medicine" and I am absolutely appalled that this was published by ACOG. As an ethicist who has chaired a hospital bioethics committee for years, I am absolutely trembling at the total disregard of ethical principals in this article. This is not an ethics committee opinion, but rather a document disguised as an ethics statement that promotes the pro-choice right-to-abortion-on-demand stance of ACOG.

Every first semester student of ethics learns that autonomy must be balanced by the other principles of ethics. Any one principle of ethics cannot trump all of the others, otherwise there is distortion of truth

and the dominant principle ends up skewing the analysis. The end result often is anything but ethical. ACOG's committee opinion #385 is an excellent example of the collapse of ethical decision making when patient autonomy is allowed to dominate over every other principle of ethics.

I have been a member of ACOG since I was a junior fellow, and have served in ACOG committee membership and leadership roles for my entire professional career. Never before have I had such a pit in my stomach about the extreme divergence that the college continues to take, alienating physicians from membership who continue to have high moral values and the integrity to maintain those values. ACOG seems to have no issues with enforcing its own collective moral conscience, or lack thereof, on me and other physicians like me.

Publishing such a document is irresponsible and reprehensible. The most appropriate action by the College would be to rescind this document.

AAPLOG appreciates the opportunity to raise these questions before the President's Council on Bioethics. We are requesting that the President's Council on Bioethics consider the ethical questions raised in this letter, and we would value your written opinion in this matter.

Sincerely,

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