



## Protection of Conscience Project

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Ambrose Centre for Religious  
Liberty,  
Sydney, Australia

**Administrator**  
Sean Murphy

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# Telephone installation, lethal injection and conscientious objection in pharmacy

**Sean Murphy**

Administrator,  
Protection of Conscience Project

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In a column carried by the *Canadian Health Care Network* and a religion BLOG in Canada's *National Post*, pharmacist Cristina Alarcon celebrated Washington State's move away from the demand that pharmacists directly provide morally controversial services. She correctly noted that the proposed 'solution,' - mandatory referral - would continue to be problematic for some objecting pharmacists.<sup>1</sup>

In response, pharmacist Frank Archer framed the issue as a conflict of professional autonomy vs. "the right of patients to obtain legal professional services." He insisted that anyone joining a profession is obliged to accept "the ethics of that profession" and must give up his own moral convictions. He further argued that professions that have a monopoly on the delivery of services are obliged to ensure that the public has reasonable access to them. Finally, Mr. Archer suggested that a refusal to refer a patient for a morally controversial service is an illegitimate interference with patient's "right to obtain legal professional services." Along the way, he made the remarkable claim that "all codes of ethics are based on the principle that the public has a right to obtain legal professional services."<sup>2</sup>

To paraphrase Mr. Archer, these assertions seem to be legitimate - but only on the surface.

As constitutional lawyer Iain Benson pointed out to Mr. Archer ten years ago, it is incorrect to frame the issue as a conflict of autonomies. It is best described as one involving conscientious convictions of a professional and the expectations of a patient. Thus, wrote Mr. Benson, it "cannot be settled by reference to one person's autonomy because two people's views or wishes (central to autonomy) are involved." Instead, he explained, the real issue must be settled by reference to principles of justice.<sup>3</sup>

In this respect, Mr. Archer's repeated and unqualified references to a "right" to services are unhelpful. To say that the public has a right to legal services means only that the public is free to obtain services that have not been forbidden by law. It does not mean that the public can compel individuals or groups to provide them. Such 'rights' have been described as "negative rights" in order to distinguish them from "positive rights," like rights to freedom of expression, conscience and religion. Positive rights are understood to impose duties upon others to accommodate their exercise, but it is absurd to insist that the legality of a service or product imposes duties upon others to provide it.<sup>4</sup>

Mr. Archer's confusion on this point is illustrated by his example of the provision of telephone service. He argues that telephone companies are not allowed to discriminate against customers because everyone has "the right to telephone service." In fact, a company's duty not to unjustly discriminate is not grounded in a negative right to telephone service, but in the positive right of a customer to be treated equally, without reference to irrelevant personal characteristics.

Note, too, that in 2004 the BC Pharmacy Association supported plans by pharmacists who, because they were dissatisfied with proposed fee reductions, planned to withdraw services to First Nations peoples in remote areas.<sup>5</sup> It would be extremely difficult to justify the position of the BC Pharmacy Association if, as Mr. Archer claims, "all codes of ethics are based on the principle that the public has a right to obtain legal professional services." But this is simply not the case. Codes of ethics are based on the principle that ethical conduct and personal integrity are essential elements of professional practice, not on concerns about supply and demand.

Ironically, concern about economically motivated withdrawal of pharmacy services from remote communities was expressed, not by the Ethics Advisory Committee of the College of Pharmacists (of which Frank Archer was then a member) but by Cristina Alarcon. She questioned the soundness of a professional ethic that supports withdrawal of pharmacy services in remote areas because of unsatisfactory fee schedules, while holding that it is unethical to refuse to facilitate morally controversial services for reasons of conscience.<sup>6</sup>

The ethical conformity demanded by Mr. Archer might be explicable if he were to demonstrate the superiority of the ethical judgements that he proposes to force upon unwilling colleagues. He might begin by explaining how professional ethics will be improved if the only candidates admitted to professions are those who promise that they will do what they believe to be wrong.

Quite apart from this difficulty, his attempt at an analogy between the Catholic Church discipline on priestly celibacy and "the ethics of the profession" fails because it compares apples and oranges. The requirement for priestly celibacy is not an ethical imperative. It may prevent a man from doing something that he might want to do, but it does not require a man to do something that he believes to be wrong. And it does not require him to promise that he will, in future, do something that he believes to be unethical.

Mr. Archer's comparison of pharmacy services to telephone service is also unsatisfactory because it presumes that all pharmacy services are morally equivalent to telephone service; that, for example, no moral or ethical questions are raised by the assertion that pharmacists are obliged to provide abortifacients and embryocides, and may eventually be required to provide drugs for suicide, euthanasia and executions. Mr. Archer was a member of the Ethics Advisory Committee that published this statement ten years ago,<sup>7</sup> so his explanation of the moral equivalence of lethal injection and telephone installation should be most informative.

While we await Mr. Archer's explanation, readers who want to more carefully consider the subject of freedom of conscience in the profession of pharmacy can review a number of documents and articles available on the Protection of Conscience Project website.

Benson, Iain T.

- *"Autonomy", "Justice" and the Legal Requirement to Accommodate the Conscience and Religious Beliefs of Professionals in Health Care.*  
<http://www.consciencelaws.org/Examining-Conscience-Legal/Legal04.html>
- BLOG on the Reading Down of Conscience Protection  
<http://www.consciencelaws.org/Examining-Conscience-Ethical/Ethical50.html>

Murphy, Sean

- *In Defence of the New Heretics: A Response to Frank Archer.*  
<http://www.consciencelaws.org/Examining-Conscience-Ethical/Ethical83.html>
- *Service or Servitude: Reflections on Freedom of Conscience for Health Care Workers*  
<http://www.consciencelaws.org/Examining-Conscience-Ethical/Ethical48.html>

Protection of Conscience Project

- Report 2001-01 (26 March, 2001)  
*Re: College of Pharmacists of British Columbia- Conduct of the Ethics Advisory Committee*  
<http://www.consciencelaws.org/Conscience-Archive/Reports/Report-2001-01.html>
- Submission to the Alberta College of Pharmacists (27 February, 2009)  
*Re: Draft Code of Ethics.*  
<http://www.consciencelaws.org/Conscience-Archive/Submissions/ACPhSubmission01.htm>

## Notes

1. Alarcon, Cristina, "Religious Freedom's New Plan B." *National Post: Holy Post*, 10 July, 2010. (<http://life.nationalpost.com/2010/07/10/religious-freedoms-new-plan-b/>) Accessed 2010-07-20. The article also appeared (opposite Frank Archer's) in *Canadian Healthcare Network*, "Point of View: Conscientious Objection."  
(<http://www.canadianhealthcarenetwork.ca/pharmacists/discussions/point-of-view>) Accessed 2010-07-18.
2. Archer, Frank, "Religious Conscience Should not Outweigh Professional Obligations to Patients." 18 July, 2010.  
(<http://life.nationalpost.com/2010/07/18/religious-conscience-should-not-outweigh-professional-obligations-to-patients/>) Accessed 2010-07-20. The article also appeared (opposite Cristina Alarcon's) in *Canadian Healthcare Network*, "Point of View: Conscientious Objection."  
(<http://www.canadianhealthcarenetwork.ca/pharmacists/discussions/point-of-view>) Accessed 2010-07-18.
3. Benson, Iain T., *"Autonomy", "Justice" and the Legal Requirement to Accommodate the Conscience and Religious Beliefs of Professionals in Health Care.*  
<http://www.consciencelaws.org/Examining-Conscience-Legal/Legal04.html>

4. For a discussion of positive and negative rights as they relate to access to health care, see Fernandez-Lynch, Holly, *Conflicts of Conscience in Health Care: An Institutional Compromise*. Cambridge, Mass.: The MIT Press, 2008, p. 39-40
5. Koopman, Brenda, "Pharmacists Threaten to Withdraw Services, NIHB Does Not Anticipate Service Interruption." *Neh Motl*, 1 November, 2004, p. 9.  
(<http://www.sliammontreaty.com/documents/news/pdf-0411-nehmotl.pdf>) Accessed 2010-07-19)
6. BC Pharmacists for Conscience News Release, 18 October, 2004, *Economics Outweighs Ethical Principles in the Pharmacy Profession*.  
([http://www.consciencelaws.org/Conscience-Archive/News-Releases/News-Releases-2004.html#Economics Outweighs Ethical Principles](http://www.consciencelaws.org/Conscience-Archive/News-Releases/News-Releases-2004.html#Economics%20Outweighs%20Ethical%20Principles)).
7. College of Pharmacists of British Columbia, "Ethics in Practice: Moral Conflicts in Pharmacy Practice." *Bulletin*, March/April 2000, Vol. 25, No. 2, P. 4.  
([http://www.bcpharmacists.org/library/H-Resources/H-3\\_ReadLinks/Bulletin-MarApr2000.pdf](http://www.bcpharmacists.org/library/H-Resources/H-3_ReadLinks/Bulletin-MarApr2000.pdf))  
Accessed 2010-07-20 (See also  
[http://www.consciencelaws.org/Conscience-Archive/Reports/Report-2001-01a.html#APPENDIX "B"](http://www.consciencelaws.org/Conscience-Archive/Reports/Report-2001-01a.html#APPENDIX%20B))