

Conscientious Objection to Abortion

What is the position in SA law?

- The TOP Acts do not contain a Conscientious Objection exemption clause, as for instance in the UK.
- But the CONSTITUTION says:
 - Section 15[1]- “Everyone has the right to freedom of conscience, religion, thought, belief and opinion”.
 - Section 16[1][b]- “Everyone has the right to freedom of expression which includes freedom to receive or impart information or ideas”.
 - Section 9(1)- “Everyone is equal before the law and has the right to equal protection and benefit of the law.
 - Section 9 (3) and (4) (paraphrased)- “No person may be unfairly discriminated against directly or indirectly on any one or more of several grounds which include religion, conscience and belief”.

- **YOUR RIGHTS**

- **The Constitution is the ultimate code of law in the country and overrides all other laws, legislation and regulations. The Constitutional Rights set out above entitle you:**
- **To resist (in court if necessary):
Any attempt to force, intimidate, or persuade you to participate or assist in any way whatsoever in any abortion procedure, or any preparations for an abortion, or any evaluation of specimens in the laboratory after the procedure, EXCEPT in a genuine emergency.**

- **This *may* include caring for a patient at any stage (for example making beds or providing meals), interviewing and filling in forms, organising theatre lists, preparing the theatre or cleaning it afterwards, transporting blood, specimens or reports, and other activities related to the abortion procedure.**
- **However this is more controversial and I emphasise the word 'may'.**

Certainly your constitutional rights do include the right to resist in court

- Any attempt to prejudice your career, terminate your employment, adversely alter your job spec, refuse you a job, discriminate against you, or victimise you in any way because of your constitutional and conscientious objection to induced abortions.

Certainly you are entitled

- To inform others about your views and convictions, in writing or orally, *provided* you do not express yourself in a threatening or intimidating manner, or physically attempt to prevent a woman from receiving an induced abortion.

- **DO I HAVE TO REFER TO ANOTHER DOCTOR?**
- Parliament, under pressure from all the opposition parties, scrapped a clause in the 1996 Abortion Bill that would have forced a doctor or nurse to refer the patient to another doctor if he/she was unwilling to do the abortion.
- But section 6 of the Act and the regulations require you to explain to a woman her rights in respect of TOPs *and tell her where facilities are available. YOU DO NOT HAVE TO REFER!*
- Explaining rights includes telling her she is entitled to counselling. And this provides an entrée to explain why you do not wish to do the TOP yourself and to invite her to consider alternatives.

Sections 6 & 10 – The obligations on doctors and nurses to inform of rights and not to obstruct an abortion:

Section 6 says no more and no less than a woman requesting a TOP shall be informed of her rights 'under the Act'. Regulation 9 goes further and adds that she shall be told

'of the locality of facilities for TOPs.'

(NB NB Section 10 criminalises certain conduct including:

'preventing the lawful termination of a pregnancy or obstructing access to a TOP facility'

The pro-choice lobby actively intimidate health workers by saying that the section 10 clause could catch a doctor or nurse who refuses to do an abortion. Legally this is NONSENSE – the clause is designed to criminalise demonstrators who blockade clinics not health workers who work inside!)

Therefore a health worker cannot be in breach of the law if he/she:

1. Explains what the law says about TOPs.
2. Tells the woman where facilities are available.

HPCSA RESOLUTION FOR INTERNS 2004

- The HPCSA sub-committee for Internship Training issued the following resolution in response to a request from Dr TD Berlyn, President of SAMA, GW Branch, Kimberley in October 2004:
- *An intern who is required to perform an abortion can refer the patient to another practitioner on conscientious grounds.....however it was again re-iterated that interns cannot refuse to provide emergency treatment in respect of bleeding or an emergency evacuation of the uterus.....*
- **This is incorrect** in that it specifies 'referral'; the law requires **only** that you provide information as to facilities.
- **This is correct** in that a health worker must never refuse treatment in a genuinely life-threatening emergency situation.

THE RIGHTS OF NURSES

- The following appears on the SANC website:
- **A Nurse has the right to Conscientious Objection, provided that:**
 1. The employer has been timeously informed in writing
 2. It does not interfere with the safety of the patient and/or interrupt his/her treatment and nursing
- The Charter of Nursing Practice, at present being drafted, expressly mentions the right to refuse to participate "in the removal or disposal of the expelled products of conception."

THE APPROACH OF PARLIAMENT AND GOVERNMENT

Ministers and Parliamentarians who have promoted the two TOP Acts have repeatedly adopted the following stance:

- 1. A conscientious objection clause should not be included in the legislation because it undermines the object of the legislation.**
- 2. However the word 'choice' in the title of the Acts must be taken to mean that both patient and practitioner have a choice in the matter.**

Great pressure was put on Parliament to include a CO clause in the 2004 Act; over and over again the above statements were repeated.

What do I do when asked to assist in an evacuation in a case where the procedure was initiated by another health professional?

- 1. Check whether the patient is in a life threatening condition. If so, act to save her life whatever it involves.
- 2. If not, assist in stabilising her if necessary.
- 3. State your conscientious objection and assist in calling up 'shadow staff' if appropriate.

HOW DO I COPE IN A COERCIVE SITUATION?

1. Immediately make a note of what was said to you. As far as possible use direct speech, eg Dr X said to me: "If you persist in your attitude I will make sure your career suffers."
2. Record names of all involved and all present as far as possible.
3. Sign and date the note, and if possible get someone to witness your signature.
4. If others sympathetic to your cause heard the remarks, get together and compose a joint statement; all sign it.
5. Repeat this process whenever anything coercive occurs again.
6. If coercive remarks are made in a lecture or over the phone, try and record them.
7. Phone me asap. 031-568-2521 083-653-8804 or MARTUS at DFL on 072 447 3428
8. Make sure your written notification of conscientious objection has gone in. If necessary file further copies. DFL can provide a form but a simple letter will suffice.

What YOU should do NOW

- **If you do not wish to participate in induced abortion in terms of your lawful rights, you should make your viewpoint known ASAP to your employer so that substitute staff can be arranged.**
- **Contact DFL for the relevant form and for advice.**

- **032 481 5550 (T) 082 781 7130**
- **032 481 5554 (F) mail@dfl.org.za**
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