

## Editorial

## Conscientious objection in medical practice

## La objeción de conciencia en la práctica médica

Alejandro Pacheco Gómez<sup>a\*</sup>

The medical practice requires a special regimen, due to its interventional and experimental nature, without disregarding the idiosyncrasy of each patient. Therefore, in the evaluation of the biomedical act, scientific, ethical and legal principles are taken as parameters. The scientific principles can be found in the so-called *lex artis*, that is, the rules and procedures of the medical profession that have been universally accepted and are contemplated in the literature.<sup>1</sup> On the other part, the ethical principles are derived from those contained in various pronouncements whose purpose is to establish general criteria for the protection of human dignity. In terms of legal principles, they have been established in legal norms of both national and international application. Although different, these principles converge as a normative framework for the medical practice. In order to put the issue in context, it is considered important to highlight the principles of autonomy, beneficence, non-maleficence and justice, as recognized in the document prepared by the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, known as the Belmont Report.<sup>2</sup> Autonomy was embodied in the principle of "Respect for persons" which incorporates two ethical convictions: that individuals should be treated as autonomous beings and that persons with diminished autonomy are entitled to protection. Whenever the biomedical act affects the patient's integrity, he exercises his autonomy to determine whether he accepts or rejects it. However, this is not the only person who has this capacity to decide, because the healthcare providers also have the right to act or not to act in light of their convictions of ethics, conscience and even religion, as long as it transgresses such valuable goods as life and dignity; this right is exercised through conscientious objection.

According to León Correa, taking up Arrieta's idea, conscientious objection is the individual public claim of normative prevalence of a personally perceived ethical imperative in collision with a legal duty contained in the law or in a contract protected by law.<sup>3</sup> That is, conscientious objection is the legal possibility of refraining from the normative mandate on the grounds that it is contrary to ethical or conscientious convictions. This legal figure has been recognized in several laws on health and advance directives; some of them are the health laws in Mexico City, Hidalgo and Jalisco, as well as those related to advance directives in Mexico City, the State of Mexico and Hidalgo.

At the federal level, through a reform published on May 18, 2018 in the Official Gazette of the Federation, Article 10 Bis was added to the General Health Law, which established the following:

- Medical and nursing professionals who are part of the National Health System may exercise conscientious objection and excuse themselves from participating in the provision of services established by this Law.
- When the patient's life is at risk or it is a medical emergency, conscientious objection may not be invoked, otherwise professional liability will be incurred.
- The exercise of conscientious objection shall not result in any type of employment discrimination.

It is worth mentioning that in several states' penal codes -Mexico City, Guerrero, Hidalgo, among others- the crime of abortion is considered as the death of the product of conception after the thirteenth week of gestation. This is what has been called the "decriminalization of abortion", which in itself refers to the fact that in the first twelve weeks of gestation the termination of pregnancy will not be considered a crime. This recognizes the woman's right not to continue with the pregnancy and therefore translates into a health service to which her effective access must be guaranteed. In this order of ideas, the National Human Rights Commission filed an action of unconstitutionality<sup>1</sup> -number 54/2018- against the article of the General Health Law, considering that, due to the subjective nature of its wording, it would put women's right to voluntary termination of pregnancy at risk of being hindered. After a study of conscientious objection and the protection of health as human rights and in light of constitutional precepts and international treaties, especially the International Covenant on Economic, Social and Cultural Rights, it decided to declare the invalidity of Article 10 Bis of the General Health Law.<sup>4</sup>

Among the points that supported its judgment, it noted the provisions of General Observation 22 on the right to sexual and reproductive health, in the sense that in the event that health care providers are allowed to invoke conscientious objection, States must adequately regulate this practice to ensure that it does not prevent anyone from accessing sexual and reproductive

<sup>a</sup> Universidad Autónoma del Estado de Hidalgo, <https://orcid.org/0000-0002-5591-602X>, Email: [alejandro\\_pacheco@uaeh.edu.mx](mailto:alejandro_pacheco@uaeh.edu.mx)

health care services, in particular by requiring that cases be referred to a non-objecting provider. In this sense, the wording of the aforementioned article 10 Bis only allowed, as an exception to invoke conscientious objection, that life was in danger or that it was a medical urgency<sup>ii</sup>. These extremes could hardly occur when a woman goes to request a termination of pregnancy, within the time limit that the law does not consider it a crime. As can be seen, the wording was very generic and its broadness would facilitate the violation of the human rights of those requesting the termination of pregnancy, since it did not regulate the possibility of guaranteeing the availability of non-objecting health personnel. The ruling does not extinguish the right to conscientious objection, but on the contrary, resolves that it must be regulated with precision and as a priority in order to ensure the exercise of the human rights of both users and healthcare providers.

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<sup>i</sup>The action of unconstitutionality is a means of constitutional control provided for in Article 105, Section II, of the Political Constitution of the United Mexican States, which consists of demanding before the Supreme Court of Justice of the Nation the invalidity of a norm for considering that it is contrary to the constitutional norm.

<sup>ii</sup> Article 72 of the Regulations of the General Health Law on the provision of health care services defines an urgency as any acute medical-surgical problem that endangers life, organ or function and requires immediate attention.