

**AN EDUCATIONAL UPDATE FROM  
THE SOUTHEAST LAW INSTITUTE™, INC.**

**To: SLI Supporters**  
**Date: December 2005**  
**From: A. Eric Johnston**  
**Re: Rights of Conscience and the Provision of Healthcare**

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SLI is called upon periodically to address “rights of conscience” for medical, dental and other healthcare students at the University of Alabama in Birmingham (UAB). Rapid advances in medical science act as a catalyst for many conflicts of conscience. Students, interns and residents, as well as, nurses, pharmacists and other healthcare providers, face dilemmas in the development of technical skills. Their rights of conscience are sometimes burdened by school requirements and then later facility requirements for them as professionals. Pressure is added to participate in objectionable areas, such as the American Public Hospital Association’s and American College of Obstetricians and Gynecologists’ recommendations that abortion be included in medical training. There are other issues, such as, euthanasia, withdrawal of nutrition from dying patients, cloning, embryonic stem cell research, prescribing RU-486, *etcetera*.

**The Law of Conscience**

“Medical ethics” refer to general standards in the healthcare community. Further than that, “rights of conscience” are individual values which may come into conflict with the values of others. Rights of conscience are protected as inalienable rights by the Declaration of Independence and as fundamental rights in the Bill of Rights to the United States Constitution. The most directly related rights are those First Amendment rights of speech and religion. Generally speaking, our free rights of expressed opinion spring from the religious, ethical or moral values we hold. Our constitution respects them all regardless of denomination, sect, religion, or belief. The Alabama Religious Freedom Amendment prohibits the burdening of a religious belief, unless the government has a compelling interest.

In addition to constitutional protections, we rely on statutory law. Alabama has only a statute on age discrimination, so we look to federal statutes for protection. In the public university or hospital context, 42 USC § 300a-7(e) forbids discrimination against interns and physicians who do not wish to counsel or refer for abortions or sterilizations contrary to religious or moral convictions. Subsection (d) protects individual rights in performance of any health service program or research activity when any part is contrary to the person’s religious or moral convictions. 42 USC § 238n(a) provides that any entity that receives federal funds may not subject a person or entity to discrimination because he or it refuses to undergo training in the performance of or referral for abortions. 42 USC § 2000e-2(d) makes it an unlawful employment practice for an employer to discriminate in a training program against any individual because of religion in the admission to (students) or employment in (physicians) any program of training.

For employers, 42 USC § 2000e-2(a) makes it an unlawful employment practice to discriminate in hiring, firing, or the terms and conditions of employment because of a person’s religion. This law applies to any employer with 15 or more employees. Most hospitals and clinics would be covered, whether public or private. In private employment, constitutional protections do not apply and if the employer has less than 15 employees, statutory protections do not apply. Conscience issues are usually restricted by the contractual, interpersonal, or business relationship of the parties. The rule there is to associate with persons with whom you have agreement in principle.

To comply with such laws, institutions have “opt out” policies. UAB has a document entitled “Staff Requests to Not Participate in Patient Care.” This permits employees and medical staff to request excusal from any aspect of patient care conflicting with cultural values, ethics, or religious beliefs. Certain procedures must be followed to comply with the opt out policy. On abortion for example, the “Women’s and Infant’s Services” form provides four categories of the level of care given in the area of “therapeutic abortions” (a euphemism for abortion on demand), including not participating. This is based on UAB’s “Hospital Interdisciplinary Standard” which must conform to the employment laws cited above.

These laws permit students, physicians and other healthcare providers to speak about beliefs. If a patient is open to the consideration of prayer or spiritual matters related to his or her physical health condition, one may speak freely. In some situations, patients do not wish to discuss those things. Also, these are matters governed by informed consent and standard of care laws related to healthcare providers.

**Conclusion**

SLI drafted an Alabama “conscience” bill, but the Legislature refused to pass it. It would have simplified and clarified opt out provisions for healthcare students and professionals due to religious or moral convictions. We hope the bill will be introduced again in the near future. In the meantime, the conflicts that may arise are very fact intensive and a warning to the wise is that if you are a healthcare student or professional and you encounter these problems, seek competent legal help immediately and comply with all legal and regulatory requirements. While you may not be required to do things against your conscience, you could lose your position or employment.