EDITORIAL

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Discrimination, Dignity, and Duty

This spring, Tennessee became the first state in the union to pass legislation that gives a mental health care professional the right to refuse to see a patient based on "sincerely held principles." HB 1840 reads:

> No counselor or therapist providing counseling or therapy services shall be required to counsel or serve a client as to goals, outcomes, or behaviors that conflict with a sincerely held principles of the counselor or therapist; provided, that the counselor or therapist coordinates a referral of the client to another counselor or therapist who will provide the counseling or therapy.[1]

Although Tennessee was the first, many other states have enacted similar laws over the past year, which critics believe represent discrimination against lesbian, gay, bisexual, and transgender (LGBT) individuals.[2]

In Tennessee, a late amendment substituted "sincerely held principles" for "sincerely held religious beliefs." The change from religious beliefs to principles may seem to attenuate the most discriminatory aspects of the law, while actually expanding both its application and acceptance. Although most civil rights advocates believe the law was designed to target LGBT individuals, "sincerely held principles" could potentially affect veterans and active-duty service members (ADSMs) with any socially stigmatized condition or circumstance from domestic violence to addiction.

No doubt, we will see the law's constitutionality argued in court. We do know that the Supremacy Clause (Article VI, Clause 2) of the U.S. Constitution states that the federal constitution and laws take precedence over state laws and constitutions.[3] Not being a lawyer, I cannot opine on how this particular piece of legislation will interact with federal law. But as a physician and an ethicist, I can say that it challenges the foundational commitment of all health care practitioners to place the good of the patient above all other considerations.

In an interview shortly before signing the law, Tennessee governor Bill Haslam discussed his decision-making process. It is "all about values," he said, "therapists cannot and should not be expected to leave those values out of their work."[4] The governor's statements are based on a fundamental misunderstanding of the ethical obligations and values intrinsic to the health care practitioner-patient relationship.

As citizens and human beings practitioners are entitled to hold any beliefs, preferences, and principles. But it is the respect for patient's beliefs, preferences, and values over and above those of the practitioner that make health care practice a profession. Professional relationships in health care are not like those in commerce or industry, entertainment, or advertising; these relationships are of a special fiduciary nature that mandates a duty to care that is expressed in both ancient and modern ethical codes.

The American Counseling Association specifically mentioned its ethics code in the organization's response to the Tennessee legislation. "HB 1840 is an unprecedented attack on the American Counseling Association's Code of Ethics, something to which nearly 60,000 counselors abide."[5] In addition, more than half a million counselors and thousands of social workers, physicians, nurses, and pharmacists also abide by codes of ethics, professional principles, and organizational policies contained in provisions explicitly prohibiting the clinician from discriminating against any patient. The American Medical Association, for example, states:

> A physician may decline to undertake the care of a patient whose medical condition is not within the physician's current competence. However, physicians who offer their services to the public may not decline to accept patients because of race, color, religion, national origin, sexual orientation, gender identity or any other basis that would constitute invidious discrimination.[6]

Governor Haslam reportedly signed the law once it addressed 2 of his concerns.[7] The first was that the bill must require that practitioners who object to treating LGBT patients or any other patient on principled grounds refer them to another counselor. Undoubtedly, this requirement is of little comfort for those denied mental health care that live in small communities. Many of these communities already face shortages of mental health professionals and higher levels of

prejudice and ostracism, which the law will only amplify.

The second provision insisted on by the governor required a counselor to continue treating a patient if the patient is a danger to himself or herself or others. This provision hardly seems exculpatory when we consider that LGBT military and veteran populations already have higher risks of suicide and struggle to access mental health care, problems the DoD and VA are addressing.[8] A referral cannot psychologically mitigate or ethically defend the devastating impact of having a therapist refuse help to an already wounded and isolated patient and may well trigger a suicide attempt.

The VA has made an impressive commitment to end health care disparities for veteran LGBT patients, but much less is known about the health care quality gaps for ADSMs. In both cases, legislation like that enacted in Tennessee only places additional obstacles on that steep climb to health care equity.

Not even the most impassioned advocate of social justice would likely say that a counselor or a nurse is not entitled to have personal beliefs and values. Codes of ethics, hospital policies, and state and federal laws often contain "conscience clauses" allowing persons to decline to participate in procedures that violate their religious and moral beliefs—we will explore this further in a later editorial. But a procedure, for example, prescribing a medication or doing a surgery is different from refusing to serve an entire group of persons on the basis of a characteristic that is neither chosen nor changeable.

A conscience clause summoned to defend or disguise clearly discriminatory actions is invalidated and self-contradictory because it violates the most essential ethical principle, that all human beings are worthy of respect and dignity. Conscientious objection on the grounds of personal religion or morality in health care ends where discrimination against a class of persons denying clinically indicated treatment begins.[9]

There are multiple clinically concerning implications of this legislation for federal practice. We are only too aware that our organizations historically have failed to safeguard the rights and dignity of ADSMs or veterans who belong to many types of minority groups. But recently we have made progress in addressing these health care disparities especially for the VA LGBT community.[10] Legislation like that passed in Tennessee and proposed in other states threatens to undermine these gains for those who served honorably and those who still put their life on the line to defend "liberty and justice for all."

Even if we continue to uphold high moral and legal principles in regards to the patients we treat in our institutions, millions of ADSM and veterans receive their care in the community, especially with the advent of the Choice Act. Our duty to care must begin within our federal auspices to ensure that all those we treat receive health care with dignity, but it must extend outside the walls of our institutions to protect those who have been or are now in uniform against discrimination in health care. ●

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REFERENCES

1. An Act to amend Tennessee Code , Title 4; Title 49 and Title 63, relative to conscientious objections to the provision of counseling and therapy. *Tennessee Annotated Code*. HB 1840 109th Leg (Tenn 2016).
2. Dobuzinskis A. Tennessee law to allow counselors to deny service based on beliefs. Reuters website. http://www.reuters.com/article/us-tennessee-counseling-law-idUSKCN0XO2VH. Published April 28, 2016. Accessed May 9, 2016.
3. Alexander MC. *A Short and Happy Guide to Constitutional Law*. St. Paul, MN: West Academic; 2013.
4. Inskeep S. For Tennessee govenor weighing religious objection bill, it's all about values. National Public Radio website. http://wnpr.org/post/tenn-gov-weighing-therapist-religious-objection-bill-its-all-about-values#stream/0. Published April 21, 2016. Accessed May 9, 2016.
5. American Counseling Association. Tennessee advances bill that tells counselors to discriminate. American Counseling Association website. https://www.counseling.org/news/updates/2016/03/24/tennessee-advances-bill-that-tells-counselors-to-discriminate. Published March 24, 2016. Accessed May 8, 2016.
6. American Medical Association. E-9.12 patient-physician relationship: respect for law and human rights. American Medical Association website. http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glbt-advisory-committee/ama-policy-regarding-sexual-orientation.page? Adopted November 2007. Accessed May 9, 2016.
7. Wagner L. Tennessee enacts law letting therapists refuse patients on religious grounds. National Public Radio website. http://wnpr.org/post/tennessee-enacts-law-letting-therapists-refuse-patients-religious-grounds#stream/0. Published April 27, 2016. Accessed May 9, 2016.
8. Matarazzo BB, Barnes SM, Pease JL, et al. Suicide risk among lesbian, gay, bisexual, and transgender military personnel and veterans: what does the literature tell us? *Suicide Life Threat Behav.* 2014;44(2):200-217.
9. Dickens BM. Legal protection and limits of conscientious objection: when conscientious objection is unethical. *Med Law.* 2009;28(2):337-347.
10. Sharpe VA, Uchendu US. Ensuring appropriate care for LGBT veterans in the Veterans Health Administration. *Hastings Cent Rep.* 2014;44(suppl 4):S53-S55.