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## Analysis and Critique of Bill 207: *Abandoning Patients Act*

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The following table explains what Bill 207 really means. It reproduces the full text from Alberta's Bill 207 in the left column, with our critique in the right column.

The bill is deceptively titled the *Conscience Rights (Health Care Providers) Protection Act* but is more aptly named the *Abandoning Patients Act* because it is overbroad and ambiguous to the extent that it would allow health care workers to abandon and harm patients with impunity, particularly patients who are women, trans, or in need of medical assistance in dying (MAID). The bill is unconstitutional to the extent that it is unenforceable.

- See ARCC's Nov 12 press release about the bill here: [Stop Bill 207: "Abandoning Patients Act" Is Unconstitutional and Dangerous](#)
- Sign ARCC's petition against the bill here: [Oppose Alberta Bill 207: "Abandoning Patients Act"](#)

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<p><b>Definitions</b></p> <p><b>1</b> In this Act,</p> <p>(a) "complaint" means a complaint received by the complaints director for a regulatory body under section 55(1) of the <i>Health Professions Act</i>;</p> <p>(b) "Charter" means the Canadian Charter of Rights and Freedoms;</p> <p>(c) "conscientious beliefs", of a health care provider or a religious health care organization, means the beliefs of the health care provider or religious health care organization that are protected as fundamental freedoms under section 2(a) of the Charter, including religious</p>	<p>(c) The definition of "conscientious beliefs" misinterprets and distorts the Charter. Section 1 of the Charter says that rights are subject to "<i>reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.</i>" This means that the right of patients to access necessary health care (under Charter values of bodily autonomy life, liberty, etc.) can outweigh the conscience of health care providers.</p> <p>Indeed, in May 2019, the <u>Ontario Court of Appeal ruled</u> that doctors who object to a treatment must provide patients with an "effective referral." The Court found that while the referral policy (of the College of Physicians and Surgeons of Ontario) did infringe the doctors' freedom of religion, the infringement was justified under s.1 of the Charter.</p>

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<p>beliefs, moral and ethical values and cultural traditions;</p> <p>(d) “health care provider” means a regulated member who holds a practice permit in good standing that has been issued by a regulatory body;</p> <p>(e) “health care service” means a professional service as defined in the <i>Health Professions Act</i> and includes the provision of a formal or informal referral in respect of a patient</p> <p>(f) “practice permit” has the same meaning as in the <i>Health Professions Act</i>;</p> <p>(g) “regulated member” has the same meaning as in the <i>Health Professions Act</i>;</p> <p>(h) “regulated profession” has the same meaning as the <i>Health Professions Act</i>;</p> <p>(i) “regulatory body” means the college of a regulated profession;</p> <p>(j) “religious health care organization” means a body corporate that provides health care services in accordance with its religious beliefs;</p> <p>(k) “unprofessional conduct” has the same meaning as in the <i>Health Professions Act</i>.</p>	<p>(d) The “right” to deny care is extended to all <u>regulated health professions</u>, including doctors, pharmacists, registered nurses, nurse practitioners, midwives, social workers, psychologists, lab technicians, and many others. This is far more sweeping than any current policy around treatment refusals in Canada, which are generally limited only to doctors or pharmacists.</p> <p>These regulated professions fulfill a public trust and owe a fiduciary duty to patients, which certainly does <i>not</i> include refusing to do their jobs by denying care and abandoning patients. If health care providers want to protect their consciences, they should do so by not choosing a field where a conflict with their beliefs will occur.</p> <p>(e) Patient referrals are defined as a health care service that can be denied, including both formal and informal referrals. This contravenes Charter case law (see Ontario Court of Appeal decision above). It also conflicts with the College of Physicians and Surgeons of Alberta’s <u>guidelines on “conscientious objection”</u>, which require doctors to make a referral to someone who can provide the service, or at least to someone who can provide accurate information on all options.</p>
<p><b>Purposes</b></p> <p><b>2(1)</b> The purposes of this Act are</p> <p>(a) to create certainty regarding the exercise of rights under section 2(a) of the Charter by health care providers and religious health care organizations,</p> <p>(b) to ensure regulatory bodies respect the rights of health care providers under section 2(a) of the Charter, specifically in respect of a complaint made against a health care provider that is based on</p>	<p>The real purpose of the bill is to attack abortion rights and LGBTQ2S+ rights. The bill allows health care providers to weaponize their personal beliefs against human rights they oppose, which primarily means abortion care, LGBTQ2S+ care, and medical assistance in dying (MAID).</p> <p>What the bill actually does is (attempt to) exempt health care providers from legal and regulatory requirements that protect vulnerable groups from discrimination under human rights codes and Section 15 of the Charter. The bill allows health care providers to put Canadians’ life and safety at risk on the basis of gender. It also contravenes patients’ Section 7 Charter rights to life, liberty and security of the person.</p>

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<p>the health care provider’s exercise of those rights,</p> <p>(c) to protect health care providers who exercise their rights under section 2(a) of the Charter from employment discrimination,</p> <p>(d) to ensure that religious health care organizations are able to support their employees who wish to exercise their rights under section 2(a) of the Charter, and</p> <p>(e) to protect health care providers and religious health care organizations from being subject to a claim for damages based on the exercise of rights under section 2(a) of the Charter.</p> <p>(2) For greater certainty, nothing in this Act derogates from a health care provider’s or religious health care organization’s obligations to their patients, which may include informing individuals of options in respect of receiving a health care service.</p>	<p>Further, the bill removes any recourse from those who are discriminated against. It eliminates existing rights and safeguards for patients who may be harmed by treatment refusals, including the ability to complain or launch a lawsuit.</p> <p>(a) Provinces have no jurisdiction or expertise to interpret Charter rights or how they can be exercised. This is the role of the courts.</p> <p>(b) Provinces should not intrude on the jurisdiction and authority of medical regulatory bodies, especially when these bodies already have in place guidelines, policies, and codes of ethics that regulate the exercise of “conscientious objection.”</p> <p>(c) Under this clause, employers of health care workers cannot “discriminate” against care deniers if they refuse to help patients under the guise of “conscience”. That is, employers would be civilly liable if they decline to hire them, or fire or discipline them – even if their actions risk patients’ lives, disrupt the workplace, or increase workloads of other medical staff.</p> <p>(d) Only individuals can have a conscience, not organizations. But this clause would allow Catholic hospitals to refuse any care that conflicts with their religious doctrine. They would not be required to provide referrals, options, or information. Ironically, pro-choice doctors working at these hospitals would have their consciences violated by being forbidden to provide some types of care.</p> <p>(e) Health care providers would have no accountability under this bill for refusing treatments and referrals. Neither patients nor anyone else can launch a lawsuit against a health care provider or organization for refusing treatment, regardless of any harms caused. (Also see section 7.)</p> <p>However, the bill cannot be legally binding because it attempts to eliminate any recourse to courts, regulatory bodies, or other fundamental systems for justice and accountability in Canada. This makes it clearly unconstitutional.</p> <p>(2) This section is meaningless because it contradicts the bill itself. The objective of the bill is to prevent marginalized groups from accessing health care, by allowing health care professionals to shirk their fiduciary obligations to patients for supposed “conscience” reasons. Further, the phrase about “informing individuals of options” is vague and can mean anything, including giving inaccurate information to patients and referring them to anti-choice agencies.</p>
<p><b>Conscience-based objection to provision of health care service</b></p>	<p>The bill does not specify a particular health care service, which means it could apply to any type of care at all. However, the bill’s intent is to target access to abortion, contraception, other</p>

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<p><b>3</b> If a health care provider or religious health care organization determines that their conscientious beliefs would be infringed by providing a specific health care service to an individual, the health care provider or religious health care organization is not required to provide that health care service to the individual.</p>	<p>reproductive health care, LGBTQ2S+ care, and MAID. It could also affect access to vaccinations. This means that some of the most vulnerable groups will be the most harmed by this bill.</p> <p>The bill refers to refusing to provide a "specific health care service", but the criteria for denying treatment are unclear. Nothing would prevent care deniers from (mis)interpreting the bill to allow discriminatory refusals of <i>any</i> kind of health care to disadvantaged groups based on their identity, such as the LGBTQ2S+ community or ethnic/religious minorities.</p> <p>If a law is ambiguous and cannot be interpreted consistently, especially when it puts patients potentially at risk, it would likely be found unconstitutional.</p> <p>The bill attempts to carve out exemptions to human rights legislation, which makes it unconstitutional. Since the bill also tries to exempt care deniers from justifying their actions (see S.4) and from any consequences (patients have no legal or other recourse), the bill is a licence for negligence and abuse of patients.</p>
<p><b>Regulatory body may not compel performance</b></p> <p><b>4</b> Despite any provision of the Health Professions Act, a regulatory body may not</p> <p>(a) impose a requirement on a health care provider that may result in the health care provider being compelled, directly or indirectly, to perform a health care service that they determine would infringe their conscientious beliefs, or</p> <p>(b) impose a requirement or standards on a health care provider to make statements to any person or body that would infringe the health care provider's conscientious beliefs.</p>	<p>(a) With the phrase "<i>...a health care service that they determine would infringe their conscientious beliefs,</i>" the bill exempts care deniers from having to justify their actions. All they need to say is that a health care service infringes their "conscientious beliefs" and this grants them complete immunity. They do not have to explain their beliefs or prove they are sincerely held.</p> <p>Again, this is a licence for abuse of patients, not to mention dishonesty and hypocrisy. Theoretically, a treatment could be refused for any reason at all, no matter how absurd, unjust, or discriminatory, because the refuser simply needs to state they have a "conscientious belief."</p> <p>Further, the clause cannot be binding because it eliminates judicial and administrative supervision of health care providers' actions, likely making it unconstitutional.</p> <p>(b) This clause overrides current guidelines around "conscientious objection" such as those from the CPSA <a href="http://www.cpsa.ca/standardspractice/conscientious-objection/">http://www.cpsa.ca/standardspractice/conscientious-objection/</a>, which require care deniers not only to make referrals, but communicate respectfully, not withhold information, and not promote their own moral/religious beliefs. These latter requirements are made null and void by this clause. Doctors would be free to say anything (or not) to their patients, no matter how inaccurate or unethical.</p> <p>The clause is also likely unconstitutional because it's inconsistent with Charter case law. It does not make sense to talk about</p>

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	<p>“infringing a belief.” Case law on freedom of religion is focused on laws that prevent people from practicing their religion. Little or no case law exists on freedom of conscience. Bill 207 appears to be much broader than what is actually protected under Charter s.2(a) “freedom of conscience and religion”. This indicates it is more about attacking the right to access abortion, MAID, and LGBTQ2S+ health care than it is about clarifying constitutional protections.</p>
<p><b>Regulatory body must dismiss complaint</b></p> <p>5(1) On receiving a complaint in accordance with section 55(1) of the Health Professions Act, the subject matter of which is a health care provider’s decision not to provide a health care service based on their conscientious beliefs, the complaints director for the regulatory body that received the complaint must immediately</p> <p>(a) dismiss the complaint, and</p> <p>(b) provide notice of the dismissal to the complainant.</p> <p>(2) For the purposes of section 56 of the Health Professions Act, the complaints director for a regulatory body must not treat any information that they receive about a health care provider’s decision not to provide a health care service based on their conscientious beliefs as a complaint or grounds for a complaint.</p> <p>(3) For greater certainty, subsections (1) and (2) do not apply to any part of a complaint or information that deals with conduct other than the health care provider’s decision not to provide a health care service based on their conscientious beliefs.</p>	<p>(1) The main protection that patients have from potential mistreatment by health care providers is removed by this clause. If a patient is harmed by a treatment refusal, any complaint they make to the regulatory body must be immediately dismissed.</p> <p>This clause effectively removes authority over “conscientious objection” from regulatory bodies such as the College of Physicians and Surgeons of Alberta (CPSA) and the Alberta College of Pharmacy, even though it’s their mandate to set and enforce standards and codes of conduct.</p> <p>For example, under this bill, the CPSA can no longer require care deniers to refer patients or provide accurate information. They may also withhold information from patients, be judgmental against them, and preach to them.</p> <p>(1.b) Provincial governments do not have the ability to eliminate a court’s influence over decisions from administrative bodies, since this is a constitutional role of the court. So the effect of this clause is to force people to go straight to court if they are refused treatment, rather than accessing the regulatory complaint system. This is probably discriminatory on the basis of sex/gender and disability, since the regulatory system would now be available to everyone <i>except</i> women who need reproductive care, LGBTQ2S+ people, and people with disabilities in need of MAID.</p> <p>(2) In an attempt to prohibit any other action, such as in cases where the patient did not or could not complain, this clause forbids regulatory bodies from taking any action when a patient is harmed by a treatment refusal. The clause suffers from the same discriminatory problems as 1(b).</p> <p>(3) To make a complaint, a patient would have to come up with a different or additional reason related to the health care provider’s conduct, apart from the treatment refusal for “conscience” reasons. This makes complaints far less feasible and less likely to be successful.</p>
<p><b>Decision based on conscientious beliefs not unprofessional conduct</b></p>	<p>Under this clause, regulatory bodies cannot discipline care deniers for “unprofessional conduct”, even though that’s exactly what treatment refusals for “conscience” reasons are.</p>

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<p><b>6</b> For the purpose of sections 56 and 57 of the Health Professions Act, a health care provider’s decision to not provide a health care service based on their conscientious beliefs is not to be considered as unprofessional conduct.</p>	<p>A global collection of <u>dozens of harmful treatment refusals</u> (for abortion) shows that the exercise of “conscientious objection” is usually accompanied by various unethical or negligent behaviours, such as lying to patients, judging them, treating them disrespectfully, delaying their care, violating their privacy, denying pain relief, and failing to follow standard medical protocols. These associated behaviours show that care denials in the name of “conscience” are wrong because they invite abuse.</p> <p>The province likely does not have the power to interpret a statute in this way, as it could be intruding into the court’s role and may be unconstitutional.</p>
<p><b>Protection from liability</b></p> <p><b>7</b> No action lies, nor may be commenced nor maintained, against a health care provider or religious health care organization in respect of a decision that they, or their employees, made to not provide a health care service to an individual that is based on their conscientious beliefs.</p>	<p>Health care providers would have complete immunity under this bill because no-one is allowed to file a lawsuit against them for treatment refusals for “conscience” reasons.</p> <p>This apparently applies regardless of the degree of harm caused. Around the world, <u>several women have died and many have almost died</u> after being refused a legal abortion by “conscientious objectors.” If this happened in Alberta, the care denier or hospital would get away scot-free under this bill.</p> <p>Regardless, if a law simply makes people less safe, it would be unconstitutional. Any law that makes patients less safe must be justified and this bill fails to do so. At the very least, an “effective referral” is required as per the Ontario Court of Appeal decision.</p> <p>It’s unlikely that provinces can pass laws that limit the court’s power in this way, which would make this bill unenforceable. It appears that the province is trying to stop courts from interpreting this entire piece of legislation under the Charter, even though that is the role of the courts.</p>
<p><b>Amends RSA 2000 cA-25.5</b></p> <p><b>8(1)</b> The <i>Alberta Human Rights Act</i> is amended by this section. [Amends chapter A-25.5 of the Revised Statutes of Alberta 2000]</p> <p>(2) The preamble is amended in the 2nd recital by striking out “religious beliefs” and substituting “religious beliefs, conscientious beliefs”.</p> <p><b>[Preamble amendment added:]</b></p> <p>WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in:</p>	<p>The bill adds "conscientious beliefs" as a new protected ground in the <i>Alberta Human Rights Act</i>, along with race, gender, disability, etc. This means that citing ones’ beliefs as an excuse to discriminate against others would be raised to the level of a basic human right.</p> <p>But what does “conscientious beliefs” even mean? – especially since care deniers don’t need to explain or justify their beliefs under this bill. A court would likely find the term overbroad and ambiguous, which would prevent any justification of the Charter s.7 infringements to peoples’ right to security of the person.</p> <p>The amendment also goes far beyond so-called "conscience rights" in health care. For example, it would allow any business owner or employer to refuse to serve or hire people from the LGBTQ2S+</p>

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<p>dignity, rights and responsibilities without regard to race, religious beliefs, [conscientious beliefs] colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation;</p> <p>[Section 7(1) amendment added]:</p> <p>7(1) No employer shall</p> <p>(a) refuse to employ or refuse to continue to employ any person, or</p> <p>(b) discriminate against any person with regard to employment or any term or condition of employment,</p> <p>because of the race, religious beliefs, [conscientious beliefs,] colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or of any other person.</p>	<p>community, on the basis that doing so would discriminate against the owner/employer by violating their “conscientious beliefs”.</p> <p><b>Bill 207 is legalized discrimination, disguised as freedom of conscience or freedom of religion.</b></p>  <p>(Gay Jesus cartoon by Mike Ritter from <a href="#">Wipe Out Homophobia, Biphobia, Transphobia and Acephobia</a> on Facebook, but found at <a href="#">Jesusinlove</a> blog.)</p>