Religious Liberty and the Current Healthcare System

Legal/Regulatory Issues and Cases at the Federal and State Level

A. Hobby Lobby

1. Hobby Lobby Stores, Inc., a privately held retail chain with more than 500 arts and crafts stores in 41 states and more than 22,000 employees, fil lawsuit in the U.S. District Court for the Western District of Oklahoma on September 12, 2012. The civil action case (Burwell v. Hobby Lobby) opp the HHS "preventive services" mandate, which forces the Christian-owned-and-operated business to either provide insurance coverage that direc violates their conscience. Due to its large labor force, Hobby Lobby was facing crippling fines of up to $1.3 million dollars per day.

2. On June 30, 2014, the U.S. Supreme Court granted a landmark victory for religious liberty, ruling 5-4 in favor of David and Barbara Green (own Hobby Lobby). In its ruling, he Court essentially agreed that under the Religious Freedom Restoration Act (RFRA), closely held for-profit business such as Hobby Lobby, are exempt from the contraceptive mandate. For more information on the case history, see http://www.becketfund.org/hobbylobby/.

B. Little Sisters of the Poor

1. Zubik v. Burwell was another case before the U.S. Supreme Court that dealt with religious institutions (other than churches or places of worship) whether or not they could be exempted from the contraceptive mandate. Six separate cases had been consolidated under this general title, most the one involving the Little Sisters of the Poor, a Roman Catholic religious order that runs over 25 homes for the low-income elderly in the United

2. Other cases under the Zubik v. Burwell (Third Circuit Court of Appeals) title included Little Sisters of the Poor (Tenth Circuit Court of Appeals), C College (Third Circuit Court of Appeals), East Texas Baptist University (Fifth Circuit Court of Appeals), Southern Nazarene University (Tenth Circu of Appeals), Priests for Life (District of Columbia Circuit), and Roman Catholic Archbishop of Washington (District of Columbia Circuit).

3. On May 16, 2016, the Court issued a per curiam (unanimous) ruling that vacated the decisions of the Circuit Courts of Appeals and remanded t cases back to those courts for reconsideration in light of the, "positions asserted by the parties in their supplemental briefs." Because the Petitione agreed that, "their religious exercise is not infringed where they 'need to do nothing more than contract for a plan that does not include coverage fo some or all forms of contraception,'" the Court held that the parties should be given an opportunity to clarify and refine how this approach would w practice and to, "resolve any outstanding issues." In a departure from the usual treatment of per curiam rulings, Chief Justice Roberts read the ruli aloud in court, saying the Supreme Court expressed, "no view on the merits of the cases." For additional details, see http://thelittlesistersofthepoor.com/#supreme-court-ruling.

C. Ward v. Board of Regents of Eastern Michigan University

1. In 2009, Julea Ward was dismissed from Eastern Michigan University's counseling program after she declined to counsel a student against her religious beliefs. The controversy occurred when she sought to use a patient referral mechanism used by all the other counseling students. Ward w to refer the clients for religious reasons: she did not feel that she could in good faith provide same-sex couples advice on their relationship becaus believed those relationships to be sinful. At a subsequent hearing, Ward was dismissed from the program for violating American Counseling Asso (ACA) Code of Ethics.

2. Ward violated no written University policy.

3. Ward lost in the lower courts, but on January 27, 2012, the court held that Eastern Michigan University may have violated the Constitution and t case was remanded back to the Sixth Circuit Court. The Court of Appeals made an important observation when they said, "Surely, for example, th on discrimination against clients based on their religion (1) does not require a Muslim counselor to tell a Jewish client that his religious beliefs are if the conversation takes a turn in that direction and (2) does not require an atheist counselor to tell a person of faith that there is a God if the clien wrestling with faith-based issues. Tolerance is a two-way street. Otherwise, the rule mandates orthodoxy, not anti-discrimination."

4. In December, 2012, the case was settled out of court with Alliance Defending Freedom representing Ward and stating this was a clear victory fo religious liberty and freedom of conscience issues.

See http://townhall.com/columnists/jeremytedesco/2013/01/04/the-julea-ward-settlement--a-win-for-religious-liberty-n1478423 for additional details

D. Keeton v. Anderson-Wiley

1. Jennifer Keeton, a student in the graduate counseling program at Augusta State University, was placed on remediation status because of conce faculty that she was unable to separate her personal, religious views on sexual morality from her work as a counselor.

2. The remediation plan focused on writing and composition skills as well as multicultural competency. Keeton decided she was unable to participa all sections of the remediation plan. Failure to complete the plan would result in expulsion by the end of the year.

3. Keeton bought suit against officials at ASU and the Board of Regents for First Amendment violations.

4. The District Court stated that Augusta State University can require its students to follow the American Counseling Association's Code of Ethics. reasoning was that Keeton's statements to professors and students conveyed her intention to violate the ACA's Code of Ethics upon becoming a counselor. Therefore, the University was justified in making her take a remediation course.

See http://www.adfmedia.org/Home/Search/?q=Keeton+v.+Anderson-Wiley for additional details.

E. Cash v. Missouri State University

1. Andrew Cash, a graduate counseling student at Missouri State University, completed over half a semester at a Christian counseling practice. D class presentation on Christian counseling, he stated that he would counsel gay clients individually on a variety of issues, but not as a couple. He informed a week later that he would be unable to continue working at the Christian counseling practice and was questioned by his internship coord about his beliefs and counseling practices. The coordinator informed Cash that he could not hold these views as they are unethical and contradict ACA code of ethics.

2. The coordinator asked Cash to read an article called, "Implications for Refusing to Counsel Homosexual Relationships." She was satisfied with paper and approved him to continue to go on to internship. However, she disregarded the hours he had accrued at the previous Christian counsel

internship. He addressed this and the University created a panel to determine whether he would be dismissed from the program. They created a Remediation plan which required him to attend 10 counseling sessions, audit two courses that he had already passed with an 'A' grade, complete supervised sessions at his practicum, and complete a self-assessment that would be reviewed by the panel in order to determine if he could reent clinical internship.

3. The panel also stated that his completed face-to-face hours were invalidated and disallowed. Cash appealed the disallowed hours all the way t provost's office. All the appeals were denied.

4. In November, 2014 Cash was called into a meeting and was told he was being dismissed from the program. He had a 3.81 GPA and a clean re

5. He currently seeks declaratory judgment and an injunction ordering the defendants to reinstate him into the MSU Counseling Program with safe so he can earn his degree. He also seeks punitive damages for constitutional violations.

See https://www.thomasmoresociety.org/missouri-state-university-sued-for-denying-student-degree-on-religious-grounds/ for additional details.

F. California Senate Bill 1172

1. California Senate Bill 1172 was passed by the California State Senate and signed into law by Governor Jerry Brown, going into effect on Janua 2013, and has critical and far reaching implications for Christian counselors. While the focus of the legislation was to address the issue of reparati therapies for same sex attraction among adolescents, the bill moves significantly beyond this purpose by threatening the religious freedoms of mi clients and their fundamental ethical right to self-determination, as well as undermining long held parental rights. This was a critical precedent-sett case, and one that significantly impacts the future of Christian counseling practice.

2. This case is not one that primarily addresses the use or discontinuation of reparative therapy (the research regarding this treatment modality re inconclusive); however it does represent a blatant disregard for faith values and the unnecessary restrictions that will be placed on clients and the families. It should be a wakeup call for every mental health practitioner, whether secular or faith-based. Additionally, there are thousands of childre are devastated by sexual abuse every year and the trauma of the experience frequently leaves them anxious and confused about their sexual ide They must be given the unrestricted opportunity to freely discuss the nature of the abuse and any same sex attractions that may have developed because of it, as well as their values and beliefs on the matter. The intent of this misguided legislation is one thing, but the potential effects on the practice of counseling and other unseen consequences, are alarming.

3. As a result of the California bill, Liberty Counsel filed an injunction with the State of California Federal Court to stop the implementation of the S "change therapy" ban law. Liberty Counsel was initially granted a primary injunction hearing on November 30th, but subsequently lost the case. M Staver, Founder and Chairman of Liberty Counsel maintains SB 1171 violates free speech and religious liberty. He further shares, "This law is an astounding violation of the right to free speech and religious liberty. Clients have the right to receive information that aligns with their values, and counselors have the right and the duty to provide information to help the clients in pursuit of their right to self-determination."

4. In effect, the law tells Californians that only the state knows what's best regarding this sensitive psychological issue. Only counsel that affirms homosexuality as normal and good will be permitted. Any counsel that seeks to reduce or eliminate unwanted same-sex attractions will be banned new law requires minors to receive, and counselors to provide, only one view on same-sex attractions, even when the client does not want to act o those attractions!"

5. The professional research literature and a number of peer-reviewed articles demonstrate positive support for the efficacy of faith, spirituality, an religious values as they pertain to treatment outcomes. For example, prominent researcher, Dr. Harold Koenig, Director of the Center for Spiritual Theology and Health at Duke University, completed a systematic review of nearly 1,600 published health-related studies and concluded that the integration of a spiritual paradigm not only demonstrates increased levels of self-esteem, social support, and life satisfaction, but simultaneously r levels of anxiety, depression, loneliness, and suicide. The research literature also supports the notion that when a client receives care within the c of his/her basic worldview and foundational value system—of which religious affiliation is a significant marker for most—treatment outcomes are m positive.

6. California Senate Bill 1172 directly and significantly undermines what is considered as a cornerstone principle in the treatment of mental health disorders – client self-determination. This principle can be found in the language of the ethical codes of notable professional member organization as the American Psychological Association (APA), the American Counseling Association (ACA), and the American Association of Marriage and Fa Therapists (AAMFT), to name a few.

7. The bill places prospective clients in an untenable double bind when receiving mental health services related to gender identity and/or sexual orientation issues, especially when their religious values may inform and direct their behavior in a manner contrary to same sex attraction. Further it may in fact, represent actual harm to the client because it does not allow the treating practitioner to address these competing value systems, lea the client with no means to process the potential inner conflict.

8. If a client's faith values are in conflict with his/her sexual orientation and/or behavior, then the client and not the state, should have the right to ultimately determine which set of values are to be incorporated into one's life. Senate Bill 1172 restricts a mental health provider from engaging therapeutically with a client on this subject, regardless of any emotional or psychological duress the client may be experiencing due to the conflict values.

9. One of ACA's divisions, the Association for Spiritual, Ethical, and Religious Values in Counseling (ASERVIC) has developed written spiritual competencies to be incorporated into treatment protocols. In reviewing the proceedings at the 2007 ACA national conference in Detroit, Michigan, ASERVIC hosted a panel discussion of educators and clinicians. These individuals were intentionally identified as being nationally recognized for expertise in teaching and research in the area of spirituality in counseling. The following are eight of the competencies that have particular relevan the discussion.

- **Competency #2** – The professional counselor recognizes that the client's beliefs (or absence of beliefs) about spirituality and/or religion a central to his or her worldview and can influence psychosocial functioning.

- **Competency #5** – The professional counselor can identify the limits of his or her understanding of the client's spiritual and/or religious

perspective and is acquainted with religious and spiritual resources, including leaders, who can be avenues for consultation and to whom th counselor can refer.

• **Competency #6** – The professional counselor can identify limits of her/his understanding of a client's religious or spiritual expression, and demonstrate appropriate referral skills and generate possible referral sources. • **Competency #7** – The professional counselor responds to communications about spirituality and/or religion with acceptance and sensitivity.

• **Competency #8** – The professional counselor uses spiritual and/or religious concepts that are consistent with the client's spiritual and/or religious perspectives and that are acceptable to the client.

• **Competency #9** – The professional counselor can recognize spiritual and/or religious themes in client communication and is able to addre these with the client when they are therapeutically relevant.

• **Competency #12** – The professional counselor sets goals with the client that are consistent with the client's spiritual and/or religious perspectives.

• **Competency #13** – The professional counselor is able to a) modify therapeutic techniques to include a client's spiritual and/or religious perspectives, and b) utilize spiritual and/or religious practices as techniques when appropriate and acceptable to a client's viewpoint.

As evidenced in the language of the above listed Competencies—in particular #8 and #12—a client's spiritual and religious values are indeed vali reasonable determinants for the focus and direction of treatment.

G. New Jersey Senate Bill 2278

1. The New Jersey Senate drafted legislation that mirrors the language of California SB 1172 and Gov. Chris Christie signed the bill (A3371) in 20 number of other states are in various stages of drafting and enacting similar bills.

H. Tennessee Senate Bill 1556

1. The national debate over issues pertaining to religious freedom, deeply held spiritual values, client rights, and the dramatic shifts we are now witnessing in our culture, has recently landed in the State of Tennessee. On April 11th, the Tennessee legislature passed House Bill 1840 (by a vo 25-6 in the upper house), which was then followed with similar results in the state Senate (SB 1556 passing 68-22). Deemed by some—most nota LGBT community—as "Hate" Bill 1840," the law was essentially designed to provide a measure of legal protection to licensed mental health professionals. The reconciled bill was signed by Governor Bill Haslem on May 2, 2016.

2. A summary of SB 1556 states, "This bill provides immunity from liability for counselors and therapists who refuse to counsel a client as to goals outcomes, or behaviors that conflict with a sincerely held religious belief of the counselor or therapist." More importantly, it emphasizes: "Counselo therapists refusing to provide counseling or therapy under this bill must coordinate a referral of the client to another counselor or therapist who will provide the service. The bill includes liability protection for those persons providing counseling or therapy services whether or not they are licensed registered, or otherwise regulated by the state."

3. Despite overwhelming bi-partisan majorities, these bills have been subject to strong criticism in some circles as being unethical and inappropria aligned with the recent flurry of other so-called "religious discrimination" laws enacted in several states. Yet, lost in the "noise" of various media ou and special interest pundits, the actual nature and intent of both HB 1840 and SB 1556 is to uphold and improve the best interests of both clients a clinicians by ethically ensuring a best practices approach to counseling and psychotherapy.

4. Over the past several decades, clinical research has thoroughly debunked the myth of "value-free" therapy. The personal and philosophical valu and beliefs of a therapist are naturally and necessarily integrated into the essence of his or her work. It has long been established in the professio community that when prospective clients present with concerns for which a therapist is not specially trained to therapeutically and competently ad and/or does not share similar values with them, then an ethical clinician should help identify a suitably trained fellow professional to whom a referr be made. It is typically in the best interests of all clients to receive therapeutic help from others who are not only adequately trained in their special areas of need, but also have a congruent worldview.

I. The Conscience Protection Act of 2016

1. H.R. 4828 (sponsored by Diane Black of Tennessee) was passed by the 114th Congress on July 13, 2016 and "…amends the Public Health Se Act to codify the prohibition against the federal government and state and local governments that receive federal financial assistance for health-rel activities penalizing or discriminating against a health care provider based on the provider's refusal to be involved in, or provide coverage for, abor Health care providers include health care professionals, health care facilities, social services providers, health care professional training programs health insurers. The Office for Civil Rights of the Department of Health and Human Services, in coordination with the Department of Justice (DOJ) investigate complaints alleging discrimination based on an individual's religious belief, moral conviction, or refusal to be involved in an abortion. DO any entity adversely affected by such discrimination may obtain equitable or legal relief in a civil action. Administrative remedies do not need to be sought or exhausted prior to commencing an action or granting relief. Such an action may be brought against a governmental entity."

See: https://www.congress.gov/bill/114th-congress/house-bill/4828 for full summary of the bill.