



NATIONAL BIOETHICS COMMISSION

RECOMMENDATION

**PARTICIPATION OF MIDWIVES IN ARTIFICIAL TERMINATION OF
PREGNANCY**

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HELLENIC NATIONAL BIOETHICS COMMISSION

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Introduction

The Hellenic National Bioethics Commission, considering the importance of a relevant question submitted by M. Moros, President of the Midwives Association of Nafplio, examined the issue of the participation of midwives in surgical interventions of artificial termination of pregnancy, which are legally conducted in public or private nursing units. More specifically, there is concern as to whether a midwife has the right to abstain from assisting such interventions for conscientious reasons.

The Commission has held a hearing on this issue with P. Panani, President of the Midwives Association of Athens, and asked for the input of G. Kreatsas, Professor of Gynecology and Director of the Second Department of Obstetrics and Gynecology of Aretaieio Hospital, University of Athens Medical School.

The facts

In Greece, the artificial termination of pregnancy is allowed by law, under certain conditions. Therefore, pursuant to Article 304(4) of the Greek Penal Code, it can be conducted: a) *freely*, up to the twelfth week of gestation, b) in case signs of serious abnormalities have been identified in the embryo *"which would lead to the birth of a pathological neonate"*, up to the twenty-fourth week of gestation, c) in case there is *"unavoidable risk"* against the life of the pregnant woman or risk of *"serious and lasting"* damage to her health, without a time limit, and d) in case the pregnancy is the result of *"rape or other criminal acts"* up to the nineteenth week of gestation.

In all the above mentioned cases, the law requires: a) the pregnant woman's *consent* (or one of her parents' in case she is a minor) and b) the intervention shall be conducted by *"an obstetrician/gynecologist with the participation of an anesthesiologist in an organized nursing unit"*.

In order to assist the medical act, the participation of midwives in the process of this intervention is necessary, especially when the pregnancy is terminated at a relatively advanced stage, thus constituting a surgical intervention. In this regard, the physician bears the responsibility of properly conducting the act, in compliance with

the rules of science and drawing on his/her experience. Therefore, midwives are subject to his/her relevant orders and instructions.

Nevertheless, one shall not exclude that midwives may object to providing assistance to such interventions for religious or generally, moral reasons. Their objection conflicts with both their general obligation to comply with the physician's orders and with serving the pregnant woman's legal interest.

It shall be reminded that the current legislation provides in this matter the case of objection, which can be expressed either by physicians [Article 2(5) of Code of Medical Ethics – Law 3418/2005¹] or by nurses [Article 20(b) of Code of Nursing Ethics – PD 216/2001²].

Recommendations

In light of the above, the Commission deems the following:

1. Refusing to participate in a medical act for conscientious reasons constitutes a legitimate manifestation of the fundamental freedom of conscience and expression and even freedom of religion. These aspects of freedom, constituting crucial moral values within a democratic society enjoy a long tradition of constitutional establishment in Greece. Midwives refusing to participate in the artificial termination of pregnancy mainly assert the claim to have this constitutional right respected. This claim is strong, regardless of whether midwives are employed in a public or private nursing unit, given that the freedom of conscience and the freedom of religion are not subject to a particular restriction stemming from the status of public servant in itself.

2. However, this freedom is not absolute. It encounters a *limit* where equally important values are jeopardized, namely the *fundamental rights* of others parties.

¹ Pursuant to Article 2(5) of Law 3418/2005: *“The physician, invoking conscientious reasons, has the right to not participate in legal medical interventions to which he conscientiously objects with the exception of urgent cases”*.

² Pursuant to Article 20(b) of PD 216/2001: *“In compliance with nursing ethics, the nurse may abstain from the process of reproduction or termination of pregnancy on the grounds of his/her personal beliefs”*.

Such values are, par excellence, women's *life* and *health*, which are placed at risk by a pregnancy. The artificial termination of pregnancy constitutes, in these cases, a therapeutic act, which, if not conducted, risks reversing the corresponding rights. The same applies for the woman's *dignity*, which also risks being reversed when the pregnancy is the result of a criminal act against her. In these cases, par excellence, the Commission deems that the conscientious objection reclines and midwives ought to participate in the act, once their timely replacement is not feasible.

3. The termination of pregnancy due to signs of serious abnormalities in the embryo, as well as the “free” termination of pregnancy up to the twelfth week of gestation, are also connected to the pregnant woman's fundamental rights, such as the free development of personality or the right to found a family. Similarly, in these cases, the Commission deems that midwives do not have the right to object, but only in case of an urgent reason (other than the possibility of imminent risk for the pregnant woman's life or health and when, for instance, the deadline set by law for conducting the act lapses).

4. Nonetheless, according to the Commission, respect of the freedom of conscience and the freedom of religion imposes, whenever a similar objection is voiced, that the physician in charge exhausts all possibilities of finding another available midwife within the nursing unit in order to conduct the medical act.

5. The explicit provision of the legislation on the nurses' right to object for reasons of conscience also covers the case of midwives, as arises from the concept of “nursing staff” under current Law 1579/1985. Nonetheless, the provision in question is proper to be interpreted in light of the above analysis so as to clearly draw the boundaries of the specific right.

Athens, 11 September 2013