

**REPROHEALTHLAW-L**  
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**New Zealand: Conscientious Objector Doctors need not refer, but they must inform:**

*Hallagan and Anor v. Medical Council of New Zealand*,  
HC WN CIV-2010-485-222 [2 December 2010]

Summary by Anna Pippus

In *Hallagan v. Medical Council of NZ*, Justice MacKenzie used statutory interpretation to ultimately conclude that Parliament has not imposed an obligation on conscientiously objecting doctors to provide referrals to non-objecting medical practitioners for abortions to patients with unwanted pregnancies. However, commentators have observed it did clarify objecting doctors' legal obligation to inform the patients that they can obtain such services elsewhere, including by contacting family planning clinics.

The defendant Medical Council of New Zealand (the Council) sets out standards of practice to be observed by medical practitioners. At issue in this case were proposed guidelines on beliefs and medical practices. They read, in part, "if you have a [conscientious] objection to abortion and you are consulted by or on behalf of a pregnant woman who wishes to have an abortion, you must, if requested to do so by or on behalf of that woman, arrange for the woman's case to be considered by another medical practitioner who is able to consider whether an abortion may lawfully be performed and take the appropriate steps required." The plaintiff medical practitioners sought judicial review of these guidelines, contending that they went beyond what the Council may lawfully require of medical practitioners.

Section 32(1) of the Contraception, Sterilization and Abortion Act provides in part that "Every medical practitioner... who is consulted by or in respect of a female who wishes to have an abortion shall, if requested to do so by or on behalf of that female, arrange for the case to be considered and dealt with". The meaning and scope of "arrange for the case to be considered and dealt with" was disputed by the parties.

Justice MacKenzie held that, according to s. 32(1) above, doctors with conscientious objections to abortion have two alternatives. If the doctor's conscience would not be infringed by referring the woman to a medical practitioner who performs abortion, the doctor must do so. If the doctor's conscience would be infringed by referring the woman to a medical practitioner who performs abortions, the doctor does not have to provide such a referral. However, in such a case, section 174 of the Health Practitioners Competence Assurance Act (HPCAA) is triggered, and "the health practitioner must inform the person who requests the service that he or she can obtain the service from another health practitioner or from a family planning clinic."

Justice MacKenzie then went on to comment on the extent of the Council's authority. He held that "the Council is not able to set professional standards which restrict the ability of the doctor to invoke a conscientious objection" and that the duty set out in s. 174 of the HPCAA – to inform women who request abortions that they may obtain it from another health practitioner or from a family planning clinic– must be seen as the "maximum obligation, and not one which may be supplemented by the imposition of professional standards."

Thus, the Council's proposed guidelines were held to "overstate the duty of a doctor with a

conscientious objection, by failing to give adequate recognition to the ability of that doctor to decline to provide the service requested”. Justice MacKenzie held that the guidelines must be amended to recognize the ability of health practitioners to refuse to refer a woman for an abortion by instead informing her that the service is available from another health practitioner or from a family planning clinic.