

BIOETHICS NOTES

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"If man makes himself a worm he must not complain when he is trodden on."

Immanuel Kant (1724-1804)

A Conversation On Duty

with apologies to the peripatetic philosophers

by Robert Shabanowitz

My Dear Friend and Colleague,

You had asked me whether or not there is an ethical duty or obligation for physicians to treat patients, even under time of severe pestilence and with great personal risk. Your question is one that has been pondered upon since the practice of medicine began, and cuts to the very marrow of what it means to be a physician. Before addressing your specific query, let us first ask the more general question of what, if any, obligation exists for a physician's "duty to treat." At first glance, one might, without the slightest hesitation, assert "Yes, under all circumstances it is absolutely a physician's duty to treat." One might even affirm that it is a silly question and you may as well ask if a carpenter should pound nails. Unfortunately, the question you ask is not answered so easily because when we speak of duties, either implied or affirmed, we become immersed in something quite different from pounding nails. Obligations assume some stronger underlying moral precepts that must be defended. You know me all too well, my friend, to expect a direct answer, and that my analysis may ask more questions than offer answers. In the end, however, perhaps we will be closer to answering your specific question.

Let us start by asking some very simple questions about the presumed ethical obligations of physicians. What, exactly, are a physician's obligations and how, as a society, do we view these duties? What are the inherent personal risks of being a physician, and must they be considered? If so, by what calculus? What is the meaning and purpose of professional codes and oaths? I would suggest that most of us believe these oaths and codes say something about duty, but what, specifically, are the expectations? And what is the presumption of professional freedom of choice? What, exactly is the obligation to treat and is there ever a right to refuse?

We can begin by asking what are the sources of this obligation? In other words, what is the ethos of health care, and what is bound in the profession? Does it, in fact, involve a moral imperative to treat? We might also ask, what is the nature of health care and what is the history and tradition of this work? We'll return to this question of history in a moment, but for now let us pursue the premise of physicians' obligations in today's society.

First, let us consider some common law obligations. In our pluralistic democratic society, we are strongly bound to liberty rights, and many might consider that this includes a presumption of a "no duty rule." This would imply that there is no strong legal requirement for a physician's duty to treat. But inherent in this system, there are also circumstances where a duty to treat is enforced; this would include emergency treatment, rules against patient abandonment and laws against discrimination. There are also other obligations, with varying moral strength and legal requirements. Contracts, for example, include required obligations, replete with legal weight. Examples include legal contracts with health care institutions or insurance plans, employment contracts or hospital staff by-laws. Medical licensing boards also include obligations that are backed by force of law. And, of course, there are the implied obligations, albeit with weak or no legal requirements, as established by professional codes of ethics or professional oaths. Even after considering these affirmed obligations, we still can't answer, without a doubt, the absolute requirements or limitations of a duty to treat. So let us return to history for more insight.

History may provide some answers to your question, but in so doing, it also asks several more. Furthermore, history can only tell us something about traditions, and traditions are often capricious. The past, however, can tell us something about the historic traditions of medicine. What, for example was medicine's tradition in times of pestilence and can this history help answer the question of obligation? How did previous workers consider the importance of their work and how seriously did they take this task? Are there circumstances that

allow for a refusal to respond? Was caring for the sick at danger to oneself considered an ethical duty? How were those that refused judged? Let us examine the historical record.

The historical record, at best, is mixed; the question of duty was raised only occasionally, usually at time of great pestilence. At those times, many providers presented themselves as helpers in time of need and, as a consequence, the public accepted and believed in this offer. This tradition, however was inconsistent. During the plague in Rome in 166 AD, Galen, the Father of Medicine himself, admitted to fleeing the city. During the Black Death, there were few, if any acts of self-sacrifice or heroism. Although there may have been religious obligations to treat, most fled the cities in fear, including physicians. During the Great Plague of London in 1665, even Thomas Sydenham, The English Hippocrates, fled the city. It was William Boghurst, an apothecary, who voiced another opinion...*“Every man that undertakes to be of a profession or takes upon him any office must take all parts of it, the good and the evil, the pleasure and the pain, the profit and the inconvenience altogether and not pick and chuse..”*

There were some providers that remained even at great personal sacrifice or death. Keep in mind that this willingness to serve in times of personal danger might have been driven by quite different intentions... courage and dedication, but perhaps also by opportunism. Whatever the intent, it was the willingness to treat that gradually became accepted as the norm. Although there was no direct discussion of “ethical obligations,” if the offer to treat was withdrawn, it was considered deceitful. Eventually, a positive reputation of medicine and of physicians developed because of the willingness of some to treat, and therefore the duty to treat slowly became accepted as a physician’s obligation. Physicians also embraced this positive reputation and the benefits thus bestowed.

One might also look to the history of the American Medical Association (AMA). What better source or imprimatur? Here too, however, there are inconsistencies in the perceived duty to treat. The first AMA Code of Ethics in 1847, stipulated, “when pestilence prevails, it is their duty to face the danger and to continue their labors for the alleviation of suffering, even at jeopardy to their own lives.” This is a very strong and unambiguous imperative. However, this imperative was eliminated from the 1957 code, and only reaffirmed, albeit in weaker language, in 1987. The strong imperative was missing, and the obligation became...“...within physician's current realm of competence...”

Is there an absolute obligation for a physician’s duty to treat? As you can see from our discussion, it is intimately tied up in how we view the practice and profession of medicine. Edmund Pellegrino considers the practice of medicine a “Duty of Altruism” and claims that there are three things specific to medicine that impose such an obligation, 1) the nature of illness itself, 2) the knowledge offered is not proprietary, and 3) the covenant is publicly acknowledged. The history and tradition of medicine, therefore, substantiates rather than repudiates a strong claim of this duty to treat. It asserts a clear and widely recognized resolution...that physicians have an obligation to treat sick and potentially infectious patients because they are members of a profession whose primary goal is an ethical calling - caring for the sick. This duty is not optional, but comes with being a health care professional, a voluntary decision. The duty to treat is not, however, absolute. If the danger of serious injury or death is too high, such risk could and should limit that primary duty. This leaves some options to the individual practitioner. Once again, there may be heroes and goats, guided by their own sense of duty and responsibility, but eventually judged by society.

What then, of your specific question? Perhaps we can draw from a time in history when fear and ignorance prevailed and the ethic of duty had not fully coalesced. I would suggest it was a combination of ignorance and fear that distracted physicians from their duty to treat. A patient with AIDS, for example, poses no great risk nor threat to either the physician, his employees nor his instruments. Patients with hepatitis or tuberculosis would offer a significantly greater threat. Even accepted limits to duty, consistent with an ethic of proportionality can not preclude treatment of the AIDS’ patient. Common practices that protect physicians from any infectious disease, such as hand-washing, blood-borne pathogen precautions, and sterilization are all that is necessary to protect him and his co-workers from infection. History repeats itself. It is only fear and ignorance that keeps him from his duty. If we are to embrace the profession of medicine, in the high tradition it has grown to accept, his patients should not be subjected to discrimination based on fear or prejudice.

Respectfully Submitted,

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