Medical Law and Ethics
Handout 1.9
Responsibilities of Physicians and Other Healthcare Professionals in the 21st Century

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This handout will take a look at the duties and responsibilities that physicians and other healthcare professionals encounter in the 21st century. Physicians and healthcare professionals handle a wide range of issues such as providing patient education to individuals who have low health literacy or dealing with noncompliant patients. In this handout, we will cover issues such as a physician's duty to treat patients during emergencies, providing care for indigent patients, caring for patients with HIV/AIDS, and ethical issues with confidentiality.

In the next handout, we will take a look at the other end of the professional relationship: the patient. Our focus will be on the rights and responsibilities that patients have when coming in for medical health services.

Physicians' Rights

As we had discussed in previous handouts, the professional relationship between a physician and his or her patient begins with a mutual agreement. The two parties decide how services will be rendered during the time of their professional relationship and what issues to expect over the course of the patient's treatment (e.g. payment, follow ups, or referrals). When a mutual agreement has been decided, a contract is formed. Patients will expect their physician to abide by the contract and provide the agreed services over the course of their treatment. Physicians, on the other hand, expect their patients to provide accurate health information and follow instructions during their care so that they may get proper medical treatment.

One of the main responsibilities that physicians have is professional competence. Although a physician has a choice whether to establish a professional relationship with a patient or not (i.e. choosing whether or not to take in the patient), he or she must provide high standards of medical care once a mutual contract is formed. In this case, he or she should treat all of his or her patients equally when rendering services

regardless of race, gender, religion, sexual orientation, disability status, veteran status or any other protected status. Physicians (as well as other healthcare professionals) should follow the code of ethics and principles from the respective organizations which they are a part of. For example, the American College of Surgeons details the code of professional conduct under its "Statements on Principles" for its Fellows throughout their work and their relationships with patients and other healthcare professionals.

Duties of the Physician and Healthcare Professional

Physicians have professional responsibilities as they practice medicine. For example, physicians (as well as healthcare professionals working with patients) have a responsibility to follow proper infection control procedures. In situations when physicians are treating patients who are at risk of infection such as those who have a comprised immune system or are of a certain age (such as the elderly or newborns), they must ensure that their staff and them engage in proper handwashing procedures.

We will now take a look at a couple of duties that physicians and other healthcare professionals face in the 21st century.

Appropriate Conduct

Physicians must maintain appropriate and professional conduct with patients and fellow healthcare professionals.

Throughout their interactions with patients, they must address them in a professional manner (whether the patient wants to be addressed by their last name or their first name) just as the patients would refer to their physician as "Dr. + his/her surname."

Sexual conduct with a patient is considered unethical and inappropriate. The physician should always maintain a professional relationship with their patients. They should not engage in inappropriate behavior such as engaging in sexual relations with a patient or having a romantic relationship with him or her.

Physicians have a duty to report any unethical conduct performed by their colleagues. According to the **American Medical Association's Code of Ethics Opinion 9.031 - Reporting Impaired, Incompetent, or Unethical Colleagues**:

"Physicians have an ethical obligation to report impaired, incompetent, and/or unethical colleagues in accordance with the legal requirements in each state and assisted by the following guidelines…"

The "following guidelines" cover the specifics regarding impairment, incompetence, and unethical conduct. (Please see the external link below the PDF in the main medical law and ethics page to read more). Since physicians have an obligation to protect their

patients from harm, reporting unethical behavior can prevent any negative consequences that may fall upon a patient's safety and well-being.

Conflicts of Interest

Physicians will encounter situations where they will face issues that can conflict with their objectivity.

In a previous handout (Handout 1.7), we discussed the Stark Law which prohibited physicians from referring patients for health services in which they or their immediate family member have financial interests or agreements with. It is important for physicians to place the welfare of the patient first and foremost and not their financial interests.

Another common issue faced by physicians is providing medical care to family members and those whom they have personal relationships with (e.g. friends or colleagues). Unless it is an emergency or a minor case, it is recommended that physicians should not provide treatment to family or those whom they have close personal relationships with.

Since the physician-patient relationship is a professional one, familial and personal relationships blur the boundaries between the professional and personal relationship. One of the foundations in the physician-patient relationship is confidentiality. When a physician has to perform sensitive procedures or testing (e.g. testing for sexually transmitted infections [STIs] or mammogram screening), issues can be raised regarding the patient's privacy and the confidentiality of their results.

Medical Emergencies

During a medical emergency situation, a physician is ethically and legally obligated to not turn away a patient who comes in for emergency care and should provide him or her with adequate treatment. If the physician does not have the adequate resources to provide treatment for the patient requesting assistance, he or she should notify the appropriate emergency personnel (e.g. paramedics), so that the patient can be transferred to a facility that can stabilize them.

Treating Indigent Patients

In emergency situations (as determined by emergency departments and the law), patients who are indigent or uninsured cannot be turned away.

In 1986, Congress passed the Emergency Medical Treatment and Active Labor Act (EMTALA), an amendment that is part of the Consolidated Omnibus Budget Reconciliation Act (COBRA). EMTALA prohibits emergency departments in participating hospitals (i.e. departments accepting Medicare payments under **42 U.S. Code § 1395cc - Agreements with providers of services; enrollment processes**) to "dump" (i.e. transfer or discharge) patients seeking emergency care to another facility.

Under **42 U.S. Code § 1395dd - Examination and treatment for emergency medical conditions and women in labor**, in cases such as an individual requests to be transferred through informed consent or another facility has better resources to treat the emergency condition, these cases are appropriate conditions for transfer.

Under EMTALA, individuals determined to have emergency medical conditions after the medical screening examination must at least be stabilized by the emergency department of the hospital. Further treatment without compensation beyond the medical screening examination and stabilization is not required.

Abandonment and Noncompliance

According to the **American Medical Association's Code of Ethics Opinion 10.05 - Potential Patients**,

"*Physicians may not refuse to care for patients when operating under a contractual arrangement that requires them to treat*"

Although physicians have the right to choose which patients they will take in for treatment, once a contract is formed with an individual the physician may not terminate it prematurely. If physicians do not formally notify the patient about ending the contract, they can be charged with abandonment. **Abandonment** is withdrawing medical care from a patient without providing sufficient or valid notice to the patient. Other healthcare professionals such as nurses or healthcare agencies/facilities can also be charged with abandonment.

Abandonment is a civil tort and can lead to malpractice litigation.

If there are situations when a physician cannot provide further care and responsibility to the patient, for example:

- Patients do not attend their scheduled appointments
- Patients display inappropriate conduct towards the physician (e.g. hostile behavior)
- Patients disregard the physician's instructions and policies

then the physician may terminate the contract and allow the patient to find another physician for treatment. Otherwise, the physician should continue to provide care and maintain the physician-patient relationship until it is formally terminated.

If the physician decides to terminate the contract, he or she should provide the patient with formal notification such as a certified letter.

Physicians, other healthcare professionals, and facilities may also deal with patients who are noncompliant or incompetent. Noncompliant patients do not follow the physician's instructions when undergoing medical treatment. Noncompliant patients who are hospitalized may choose to voluntarily discharge themselves against the physician's orders. This is referred to as leaving "**against medical advice**" of the treating physician. **Against medical advice** is when a noncompliant patient voluntarily chooses to leave the hospital before the treating physician provides a recommendation for discharge.

Incompetent patients are individuals who may not be able to properly make decisions regarding the course of their treatment. In these cases, the physician may choose an individual who will act on behalf of the patient (e.g. a family member or close friend). If the patient may pose as a threat to themselves or to others, the physician may take the matter to the court where a judge can sign an emergency petition for inpatient admission and evaluation.

Treating Patients with HIV or AIDS

Many ethical issues arise for physicians and other healthcare professionals when treating patients who are infected with HIV or AIDS or on the other hand, the practicing professionals themselves are infected with HIV or AIDS. We will look at both sides of these issues: being on the patient end as well as being on the healthcare professional's end.

The **human immunodeficiency virus (HIV)** causes the immune system to break down and may progress to **acute immune deficiency syndrome (AIDS)**. According to AIDS.gov, HIV infection progresses through three stages if left untreated (acute HIV infection, clinical latency, and AIDS).

Individuals are encouraged to get tested for HIV so if there are any signs of infection, they can undergo antiretroviral therapy to control or slow its progression. Since HIV/AIDS is a sensitive matter and has a strong social stigma associated with it, maintaining confidentiality is very crucial. As such, it is also important to be understanding and compassionate when providing care to patients who are infected with HIV or AIDS similar to providing care to patients who have chronic diseases such as cancer or heart disease.

Individuals must give their informed consent to get tested for HIV or AIDS.

Physicians encounter ethical issues related to working with patients who have HIV or AIDS. A few of these issues to consider include:

- Having a discussion with the patient to inform any partners who he or she are involved with
- Reporting results to public health authorities, state health departments, and the Centers for Disease Control

- In certain states, disclosing HIV status to partners of individuals who have a high risk of transmitting HIV

To read about the legal disclosure policies of HIV status in the United States, please visit the "Legal Disclosure" supplementary link found together with the link to this handout.

According to the Americans with Disabilities Act of 1990 (ADA), individuals who have HIV/AIDS infections are federally protected from discrimination. It considered unethical to refuse to provide treatment as well as avoid working with individuals who are infected with HIV or AIDS.

A common dilemma faced by physicians is honoring patient confidentiality, but on the other hand facing the possibility of risk of litigation for failing to warn individuals who may be affected by exposure to the HIV or AIDS infected individual. An ethical question that arises is "*Should a patient be tested for HIV or AIDS without their informed consent if he or she poses a threat to others or healthcare workers (e.g. healthcare workers who may be exposed through needlestick injuries)?*"

Another issue deals with HIV-infected healthcare workers. In the **American College of Surgeons' (ACS) Statement on the Surgeon and HIV Infection**, the ACS stated that an HIV-infected surgeon can perform invasive procedures as long as there is no evidence of a high risk of transmission to the patient. On the other hand, the **American Academy of Orthopedic Surgeons (AAOS)** recommends that HIV-infected surgeons should not perform any invasive procedures in their **Advisory Statement of HIV-Infected Orthopedic Surgeons**.

Other ethical issues that arise include whether a healthcare professional should inform their status to patients they are treating and whether the work of HIV-infected workers should be limited or restricted (as discussed in the previous paragraph).

As we had already discussed, the physician has an obligation to "do no harm" to their patients. Would restricting HIV-infected healthcare professionals from participating in invasive procedures protect the patient's safety? Do healthcare workers have to disclose their HIV status to their patients?

In the **American College of Occupational and Environmental Medicine's (ACOEM) recommendation of HIV and AIDS in the Workplace**, they stated:

"*…ACOEM does not consider that any invasive medical procedure has distinguished itself as "exposure-prone" with respect to HIV transmission from health care worker to patient. Hence, ACOEM finds no basis to otherwise restrict the practice of health care workers infected with HIV who perform invasive procedures, and does not support notification of patients of a health care worker's HIV status unless an exposure has taken place.*"

Properly Identifying Patients

In order to prevent medical errors, proper identification of the patient is crucial. In addition to asking a patient to state their name, the physician or other medical staff can verify a patient's identity by looking at other identification (e.g. driver's license, passport, school ID, medical wristband).

Common issues that physicians and other healthcare professionals encounter with patient identification include:

- Communicating with patients who do not speak the country's official language
- Communicating with patients with auditory problems
- Communicating with patients with impaired cognitive abilities (e.g. Alzheimer's disease)

With these populations, the patient may not recognize or understand what the physician or healthcare professional is asking when he or she is asked to identify their name. In these cases, examining other identification as we had discussed earlier can be beneficial.

Respecting a Patient's Confidentiality

Patients' protected health information must be handled with full confidentiality. When discussing information about a patient with other medical personnel, it is important that they use a low tone and ensure that the information is not discussed within earshot of other patients.

Other office and hospital personnel such as receptionists and patient schedulers also handle patient records and registration. When the receptionists and schedulers speak to patients on the phone, it is important that they cannot be heard by patients in the waiting area. Health information from forms, computers, and medical records on their work station should not be visible by patients in the waiting area.

Accuracy and Truthfulness

Physicians face ethical dilemmas when discussing a prognosis with terminally ill patients. A **prognosis** is a prediction for the course of a disease. While informing patients regarding their prognosis can allow them to have more control over how they can live the rest of their lives, it can also be traumatic and negatively impact their mental health.

While the physician can try to protect the patient by not disclosing the details of their prognosis, the medical ethicist Joseph Fletcher stated that providing the true details of the patient's prognosis is better in the long run since medicine is so complex. Trying to hide the prognosis can become very involved resulting in confusion and frustration from the patients, their families, and the medical care team.

As medicine progresses in the 21st century, many more patients are open about their conditions due to continued support by the medical field and the entire community. Patients who have cancer, diabetes, and other diseases work with communities and organizations to bring their stories and conditions to light so that medical advances and support can move forward.

Falsification of research data has shown to have negative consequences. Dr. Roger Poisson, a Montreal surgeon, provided false data in a major breast cancer study to help patients. Dr. Poisson advised for a lumpectomy (a less radical, less disfiguring procedure) as an effective treatment to breast cancer (instead of a mastectomy). For 15 years, he continued with his false claims. (I will include the New York Times article for you to read regarding this case)

While Dr. Poisson tried to provide patients with access to advance medical care through deception, his falsified data could have had negative consequences on the prognosis of patients with breast cancer.

Another issue with truth and accuracy deals with conflicts with confidentiality, specifically breaching confidentiality to prevent harm. In the case of *Tarasoff v. Regents of the University of California, 17 Cal. 3d 342, 1976*, one of the patients (Prosenjit Poddar) of psychologist Dr. Lawrence Moore threatened to kill Tatiana Tarasoff. Mr. Poddar went through with his threat and killed Tatiana Tarasoff. The court's holding (determination) on the case stated that psychotherapists have a duty to protect individuals who are at risk of harm from statements provided in confidence. In this case, the psychotherapists have a duty to break confidentiality in order to prevent danger to the affected individuals.

A statement from the American Hospital Association's Committee on Biomedical Ethics also discusses this issue in regards to confidentiality:

"*Also subject to state law, confidentiality may be overridden when the life or safety of the patient is endangered such as when knowledgeable intervention can prevent threatened suicide or self-injury. In addition, the moral obligation to prevent substantial and foreseeable harm to an innocent third party usually is greater than the moral obligation to confidentiality.*"