

THE 'DIFFICULT' PATIENT – MAY I REFUSE TO TREAT HIM?

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ABSTRACT

Doctors have both legal and ethical responsibilities towards their patients. Is it ever acceptable to refuse to treat a patient? In fact, it is, although the healthcare practitioner has to beware of abandonment of the patient. Some of the reasons for refusal to treat that are discussed in this article include risk to the doctor, non-compliance on the part of the patient, conscientious objection to the required treatment, or if the patient is hostile or abusive to the doctor and/or treating team.

INTRODUCTION

One of the medical students at my university emailed me recently to ask me about a really difficult situation in which he found himself. He was seeing a 45-year-old man with epilepsy who was not adherent to his medication and who still had frequent seizures. In addition, he was an alcoholic. Although he wanted to respect the patient's decision-making capacity and autonomy, he realised that beneficence outweighed autonomy as uncontrolled epilepsy could have severe, even fatal, consequences. However, if the patient continued to take his medication erratically, did he have the right to refuse to treat the man?

WHAT ARE THE DOCTOR'S OBLIGATIONS TOWARDS THE PATIENT?

Medicine is usually regarded as a moral enterprise: patient welfare is the guiding principle of the medical profession.¹⁻³ The Physician Charter states, 'Altruism contributes to the trust that is central to the physician-patient relationship. Market forces, societal pressures, and administrative exigencies must not compromise this principle.'² Savulescu writes that, in order to become doctors, people have to accept that they have to fulfil certain obligations. 'To be a doctor is to be willing and able to offer appropriate medical interventions that are legal, beneficial, desired by the patient, and part of a just healthcare system.'⁴

Doctors have both ethical and legal obligations towards patients. From an ethical point of view, doctors are required to promote the following principles: respect for autonomy; beneficence (to do good); non-maleficence (to do no harm); and justice (which includes patients'

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rights, fair distribution of limited resources, legal justice and social justice).

Under American law medicine is not regarded as a moral enterprise but as a legal contract between the doctor (provider) and the patient (client).¹ In South Africa, in private practice the patient has a contractual relationship with the individual doctor whereas in the public health sector the relationship is between the patient and the healthcare authority. In turn, the doctor has a duty to care for the patient.^{5,6} Private practitioners may legally refuse patients provided they do not do so on unconstitutional grounds (unfair discrimination, racial or religious grounds).^{5,6} In emergency situations doctors are compelled both under the Constitution and by professional ethical guidelines to help people whose lives or health are in danger.

The doctor-patient relationship requires that the doctor not abandon his/her patient once treatment has commenced. This agreement only ends once the treatment is finished or the patient decides to stop treatment or go elsewhere. Doctors cannot force patients to accept treatment unless it is in the interests of public health to do so, and a court order has been issued.

ON WHAT BASIS MAY DOCTORS REFUSE TO TREAT PATIENTS?

The doctor may not refuse to care for patients just because he dislikes them or because of the patients' lifestyle choices, such as smoking or alcohol abuse. Some of the commonest reasons for refusal to treat include risk to the doctor, non-compliance on the part of the patient, conscientious objection to the required treatment, or if the patient is hostile or abusive to the doctor and/or treating team.^{1,7} All of these will be addressed in the following paragraphs. Other reasons that account for a doctor's decision to dismiss a patient, are: (i) patients who repeatedly fail to keep appointments or who cancel too late to rebook patients, thus leading to loss of income or the inability to accommodate other patients; (ii) if a patient owes the doctor money and has made no effort at all to make arrangements to pay the arrears; and (iii) if the patient's health insurance only reimburses the doctor at a very low rate.⁸ Resource constraints constitute an acceptable reason to refuse expensive or scarce treatment, but the patient must still be treated within those limited resources and cannot be abandoned.

Refusal of treatment on grounds of occupational risk

In the early days of the AIDS epidemic, doctors were afraid to treat patients with AIDS because of the risk to themselves. At that time there were no antiretroviral treatments and post-exposure prophylaxis was not available. This resulted in discussions regarding weighing up doctors' rights to choose which patients to treat versus beneficence to patients, with most professional societies issuing guidelines stating that doctors had a duty to treat their patients. The patient's best interests (i.e. beneficence) are regarded as

paramount in the doctor-patient relationship, taking precedence over the doctor's self-interest. During the severe acute respiratory syndrome (SARS) epidemic in 2002-2003 a number of doctors and nurses died from occupational exposure to hospitalised patients. In South Africa multidrug-resistant and extensively drug-resistant tuberculosis also poses significant risks to healthcare professionals.

According to South African law there is no liability for a mere omission of treatment, except where there is a legal duty to act, such as an emergency.^{5,6} Healthcare practitioners and staff have the right to protective measures to reduce disease transmission at health institutions. Under conditions of extreme risk to doctors, such as the SARS epidemic, or a patient with viral haemorrhagic fever, the doctor may well have the right to decide to refuse to treat a patient unless it constitutes an emergency situation.

How should one respond to situations posing significant health risks to healthcare workers, such that they are reluctant or afraid to treat the patients posing a risk? Refusal to treat on grounds of occupational risk can be addressed by firstly acknowledging the doctor's fear and anxiety. Secondly, the occupational risk should be minimised as far as possible. Finally, an assessment of the risks to healthcare personnel should be weighed up against the benefits to the patient(s). Only if the medical benefits are adjudged to be considerable and the probability of the benefit is highly likely, then the care should be provided once the potential risks to the healthcare personnel have been minimised.⁷

Refusal of treatment on grounds of non-compliance

All of us are non-compliant at times – when we fail to complete a course of antibiotics, miss routine check-ups at the dentist, or overindulge in food or drink.⁹ Non-compliance relating to chronic diseases may be defined in terms of the percentage of drug doses taken or the number of renal dialyses missed per month. Non-compliance or non-adherence is seen as a combination of failure of the healthcare system and factors such as patient beliefs, anxiety, medication side-effects or social and economic circumstances.⁹⁻¹¹

The approach to the non-compliant patient entails ascertaining how much of the disease process and its treatment the patient understands, and whether other healthcare professionals or family or friends are able to assist in resolving the situation. Obviously the approach is influenced by the seriousness of the condition and the implications of the non-compliance.^{7,9}

Refusal of treatment on grounds of conscientious objection

Sometimes doctors refuse treatment such as termination of pregnancy and contraception on grounds of conscientious objection, particularly because of religious beliefs. According to the Constitution doctors are not compelled to provide treatment that is against their beliefs and religion, but doctors working for the State are obliged to treat patients if there are no other doctors or facilities available.^{5,6}

Savalescu is of the opinion that conscientious objection is wrong and immoral if 'the duty is a true duty' and it should be illegal '(w)hen there is a grave duty.' He states, 'If people are not prepared to offer legally permitted, efficient, and beneficial care to a patient because it conflicts with their values, they should not be doctors.'⁴ He offers the following arguments against conscientious objection:

- Inefficiency and inequity: patients will have to shop around to find a doctor who is willing to supply the treatment, and some patients may not be informed that they are entitled to do so.
- Inconsistency: if a doctor cannot refuse to treat a patient despite the risk to himself, how can there be justification for doing so on religious or other beliefs?
- Commitments of a doctor: doctors are obliged to offer treatments that are legal and benefit the patient as part of a healthcare system based on fairness.
- Discrimination: it is discriminative to elevate religious beliefs above secular moral and ethical values.

However, if a doctor's moral values do not compromise patients' treatment and there are other medical practitioners who are prepared to provide treatment, then that doctor's values could be respected. In such a case, the patient should be informed timeously that the doctor is unable or unwilling to provide the service, so that s/he can consult another practitioner.

Refusal of treatment on grounds of abusive or hostile patients

The National Health Act states that healthcare practitioners and personnel have the right to refuse to treat a patient who is physically or verbally abusive towards them, or who sexually harasses them.^{5,6} As far as possible, beneficence and patient welfare should be the overriding considerations in difficult doctor-patient relationships, but sometimes the situation becomes intolerable. Enlisting assistance from other healthcare professionals may help, but sometimes the only option is for the patient to be referred to another doctor.

ABANDONMENT OF THE PATIENT

Abandonment is when 'a doctor ceases to treat a patient before the patient has recovered or has terminated his or her contract with the doctor.'^{6,12} Under the common law a doctor is required to refer a patient to another doctor or make arrangements for his or her further treatment if he is not going to continue to treat that person. If he fails to do so, he will be liable for damages, unless he can demonstrate that the patient has made it impossible for the doctor to continue treating him/her. Abandonment of a patient may lead to the following charges: unprofessional conduct, breach of contract, or delict based on negligence.^{6,12,13} This means that a doctor who is no longer able to care for a patient must ensure that the patient is referred to another doctor who must have full information regarding the patient's situation and management.

Ethically a doctor may not abandon a patient with whom he has established a doctor-patient relationship, and he is obliged to help that patient to find a new doctor and to provide all the information and records required for continued care.^{5,7}

MAY I 'FIRE' MY PATIENT? MANAGING DIFFICULT DOCTOR-PATIENT RELATIONSHIPS

My advice to the student was that he could not refuse to prescribe the patient's treatment, as epilepsy is a serious and potentially life-threatening condition, so that beneficence outweighs patient autonomy in this case. I suggested he re-educate the patient about his illness, the medication and adherence, and the danger of mixing alcohol with his medication. I recommended involving a social worker and the patient's family to see if he could improve the situation. I also advised him to make careful notes of his discussion with the patient and the advice he gave him.

Lo advises the following approach to the difficult doctor-patient relationship: (i) recognise that there is a problem; (ii) try to see the problem from the patient's point of view; (iii) the doctor should acknowledge his/her own responses to the relationship; and (iv) the doctor and patient should try to negotiate an acceptable way forward.⁷ This may require wide consultation to address the problem, but if all fails and the relationship remains adversarial, the best option would be to terminate it and find a mutually acceptable alternative. The doctor could provide a list of other suitably qualified practitioners in the area or refer the patient to another healthcare institution.

CONCLUSION

Doctors have an ethical obligation to care for patients, but private practice doctors are permitted to terminate the difficult doctor-patient relationship, provided an alternative is available. There is no duty incumbent on doctors to treat people who are not their patients, except in medical emergencies.⁶ There are many grounds for refusing to treat a patient, but non-compliance is not a good reason for refusal of treatment, unless continued non-compliance impacts negatively on the doctor-patient relationship. In such a case the doctor must do everything possible to ensure compliance, and should not abandon the patient.

Declaration of conflict of interest

The author declares no conflict of interest.

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ETHICS CPD QUESTIONNAIRE – THE ‘DIFFICULT’ PATIENT – MAY I REFUSE TO TREAT HIM?

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1. **True or false:** Patient welfare is considered the guiding principle of the medical profession.
 - a) True
 - b) False
2. **True or false:** The Physician Charter states that market forces are permitted to affect the trust that is central to the doctor-patient relationship.
 - a) True
 - b) False
3. **True or false:** Resource allocation is an important aspect of patient autonomy.
 - a) True
 - b) False
4. **True or false:** The private practitioner's relationship with his patient is a contractual one, and the doctor is not obliged to care for patients other than his own.
 - a) True
 - b) False
5. **True or false:** In South Africa, doctors are obliged to help people in medical emergency situations, even if they are not their own patients.
 - a) True
 - b) False
6. **True or false:** Health institutions are required to provide protective measures for healthcare personnel so as to reduce the risk of transmission of tuberculosis to them.
 - a) True
 - b) False
7. **True or false:** A doctor is allowed to refuse to perform a termination of pregnancy at a State institution in South Africa on grounds of his religious beliefs even if he is the only healthcare professional available to do it.
 - a) True
 - b) False
8. **True or false:** Healthcare personnel are not allowed to refuse to treat patients who are verbally or physically abusive towards them.
 - a) True
 - b) False
9. **True or false:** Abandonment of a patient occurs when a doctor stops treating her before she has recovered from her illness, and she has not terminated her contract with the doctor.
 - a) True
 - b) False
10. **True or false:** Abandonment of a patient may lead to charges of unprofessional conduct or delict based on negligence against the doctor.
 - a) True
 - b) False

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