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Professional Obligations in the Face of Risks to Personal Health

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Learning Objectives

1. To appreciate the legal and ethical basis for professional obligations in the face of risks to physicians' personal health
2. To appreciate a range of perspectives in regard to professional obligations in the face of risks to physicians' personal health

Case

Canadian health care workers are facing a wave of an epidemiologically significant respiratory infection for which a non-specific case definition is being used. There is no definitive diagnostic test at this point, given that the etiologic agent is unknown. There is no effective vaccine and no known effective treatment. During this new outbreak, dozens of health care workers have had occupationally acquired illness, some have infected their families and three have already died. Many are wearing cumbersome equipment in an attempt to protect themselves, causing significant discomfort, reducing their ability to work and reducing contact with their patients. There is much discussion of the similarities between this situation and the onset of severe acute respiratory syndrome (SARS) in 2003.

Dr. Penser is a 43-year-old emergency department physician working in a large pediatric tertiary care hospital. She is afraid of contracting this new infectious disease at work and infecting her partner and her two young children. She is unsure how to balance her range of conflicting obligations to her family, her patients, her profession, her colleagues and the hospital in which she works. Dr. Penser is unsure about how much personal risk she should accept as part of her job. She is also wondering whether the hospital in which she works is doing enough to create a safe work environment.

Questions

1. Does Dr. Penser have a legal obligation to treat patients with the new infectious disease?
2. Does Dr. Penser have a legal right to refuse her obligation?
3. Does Dr. Penser have an ethical obligation to treat patients with

- the new infectious disease?
4. Does this case highlight any specific obligations that the hospital has toward Dr. Penser?

Discussion

Q1. Does Dr. Penser have a legal obligation to treat patients with the new infectious disease?

Legislation and case law addressing the legal obligations of physicians to treat patients in the face of risks to their personal health is limited.

The duty to care is one component of the law of negligence. In order to establish a physician's liability in negligence, four requirements must be met: (1) the physician must owe the defendant a duty of care; (2) the physician must fail to meet the standard of care established by law; (3) the patient must suffer an injury or loss; and (4) the physician's conduct must have been the actual and legal cause of the patient's injury.¹

When a physician-patient relationship exists, the physician has a legal and ethical duty to care for and not abandon that patient. A limit to this duty exists where the patient is given a reasonable opportunity to arrange for alternative health care services.

A physician does not owe a duty to care for, and thus has not been legally required to treat, someone who is not already his or her patient. However, there are exceptions to this rule, and recent case law highlights a positive duty to provide treatment in emergency departments despite the absence of a prior doctor-patient relationship. A duty to care has been found based on the fact that the public relies on the care of physicians in hospitals that hold themselves out as providing emergency care.²

Under tort law, the scope of the duty to care is determined by the actions of the reasonable person. In determining the scope of Dr. Penser's legal duty to care, one must consider what a reasonable physician in the same situation would do. This reasonableness standard places limits on what the duty to care requires a physician to do. These reasonable limits are what allow physicians to go home at night, take vacations and get paid for their work. However, despite a general agreement that such limits exist, debate remains as to how much risk to self is reasonable under a physician's duty to care.³ Whether or not Dr. Penser is legally required to put her own health at risk in treating patients depends on the amount of risk that a reasonable physician in similar circumstances is determined to be willing to endure in treating patients.

Q2. Does Dr. Penser have a legal right to refuse her obligation?

Many Canadian jurisdictions have occupational health and safety legislation that generally gives a worker the legal right to refuse work when that worker has reason to believe that the physical condition of

the workplace is likely to endanger that worker's safety. For some workers, this is a limited right. Workers with the responsibility to protect public safety (i.e., firefighters, police officers and those involved in the operation of a hospital) cannot refuse work if the danger is a normal part of their job or if refusal will endanger the life, health or safety of another person.

The question is whether circumstances such as the one outlined in the case above would constitute a danger that is a normal part of a physician's job. In today's post-SARS world and with the widespread awareness of the threat of pandemic influenza, physicians are aware of the risk of exposure to serious infectious diseases associated with their particular specialty. By entering into a particular specialty, physicians are implicitly consenting to the risks and responsibilities associated with that job.⁴

It is also arguable that taking on significant risks to personal health is an extraordinary act that goes beyond the professional duty to care. In a context where there is no established physician-patient relationship, no emergency scenario, no legitimate reliance on the fact that care would be provided, as well as reasonable alternatives for care, one could argue that there would be no duty on a physician to provide care in the face of risks to personal health that are over and above the risks associated with that physician's day-to-day provision of care.

Q3. Does Dr. Penser have an ethical obligation to treat patients with the new infectious disease?

There is a range of principles and sources that Dr. Penser should consider when thinking about whether or not she has an ethical obligation to treat patients with the new infectious disease.

The professional obligation of physicians to treat patients is grounded in the ethical principle of beneficence. Beneficence captures the moral obligation on the part of physicians to further the welfare of patients.⁵

The physician-patient relationship is generally characterized ethically and legally as a fiduciary relationship. This characterization recognizes a special vulnerability of patients entrusting their care to physicians. In this fiduciary relationship, physicians are bound to act with good faith and loyalty, not allowing their personal interests to conflict with their professional duties.⁶

The current Canadian Medical Association's "CMA Code of Ethics" does not directly refer to a duty to care under circumstances where providing care would put the physician's own health at risk. The code does state, however, that physicians are responsible for providing "whatever appropriate assistance you can to any person with an urgent need for medical care."⁷

The extent of care that the "CMA Code of Ethics" would require Dr. Penser to provide patients in the face of risks to her personal health

would be dependent on the interpretation of "appropriate assistance" and "urgent need" under this code.

The ethics and health policy literature have described a duty to care for sick patients notwithstanding the risk to personal health. This duty has been held to exist for several reasons:

1. The ability of physicians to provide care is greater than that of the general public, thereby increasing their obligation to provide care.⁸
2. By freely choosing a profession devoted to care for the ill, physicians assume risks.⁹
3. Physicians are part of a broad societal social contract that calls on all to sustain the health care system.¹⁰

In this case, Dr. Penser's professional duty to care for patients may conflict with her personal obligations to protect her children.

Q4. Does this case highlight any specific obligations that the hospital has toward Dr. Penser?

The occupational health and safety statutes create legal reciprocal duties of care for employers to protect their employees. For example, Ontario's Occupational Health and Safety Act requires that employers "take every precaution reasonable in the circumstances for the protection of a worker."¹¹ This leaves us with unanswered questions such as these: Who should define what is "reasonable"? What is the duty of care when a worker considers the precautions taken by the institution to be inadequate?

The physicians' ethical duty to care for the sick imposes a correlative duty on health care administrators to develop and deploy procedures to maximize the safety of front-line physicians.¹² The ethical value of reciprocity calls upon health care institutions to support and protect physicians,¹³ to help them cope with very stressful situations, to acknowledge their work in dangerous and difficult conditions, and to have workable plans for emergency situations.

Conclusion

Physicians should attempt to clarify and negotiate expected responsibilities with colleagues and supervisors before they are faced with risks to personal health. If no guidance policies exist, they should advocate for the creation of such documents. The ethically and legally grounded duties of both physicians and health care organizations, and Canada's experience with infectious disease as well as expected cases such as this one should serve together as the impetus for collaborative efforts to establish proactive guidelines for practice under circumstances that may pose health risks to physicians.

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