

SURGICAL ETHICS CHALLENGES

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Business dealings with a patient: Money never sleeps

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Mr M.O. Gul returned for his postoperative visit today after you successfully repaired a leaking abdominal aortic aneurysm. Mr Gul owns most of the cable networks in the state, making him a billionaire. He realizes that he met the bearded reaper and walked away because of your skills. He is pioneering a new technology that will make current Wi-Fi obsolete. Unexpectedly, he offers you the opportunity to invest with the expectation of huge returns. M.O. personally guarantees you will not lose money. What should you do?

- A. Invest. No questions asked.
- B. Do not invest. It is unprofessional.
- C. Do not invest without consulting with your attorney.
- D. Do not invest. You have already been paid for services rendered.
- E. Invest provided you forego future medical relationships with M.O. as the attending physician.

Friendship is like money, easier made than kept.

Samuel Butler

We are programmed culturally to consider categories of people important in our lives as equals. When questioned about which child is the favorite, few parents would make their choice public. As professionals, physicians owe all their patients the same consideration and compassion. After all, each patient is equally a patient and professional responsibility is based on disciplined assessment of each patient's condition and needs.

But is this always true in practice? Family members of physicians, friends, friends of friends, other docs, celebrities, influential people, and patients that we happen to like may get the same quality of care but with differing delivery. Medical practice delivery of care parallels every other aspect of societal interaction. When the mother of one of us (L.B.M.) was hospitalized and he went to help out, it happened that one of the physicians treating her had trained at our medical school. The change in the level of attention to his mother's needs—by this physician and by

his colleagues as word spread that the “ethics professor's” mother was in the house—noticeably changed. The other of us (J.W.J.) recently had a procedure at a renowned medical institute where several surgeons he helped train practice. The attending physician gave him his cell phone number and called the day after discharge to ask how he was doing. If nothing is taken from other patients, is there any basis for ethical concern when, as a matter of course, minor favoritisms are shown?

Preferential medical treatment is sold as a commodity; it is packaged as concierge floors in hospitals and in private practice “boutique medicine.” Besides exchanging money, what is the difference between boutique practice and favoritism? There is nothing wrong with being compensated for honest work in medical practice, and some are willing to pay for more considerate care, which in itself is ethically neutral. Our profession is not, however, understood in medical ethics to be primarily an entrepreneurial undertaking, driven by remuneration. Instead, medicine is understood to be a profession characterized by fiduciary responsibilities not expected of entrepreneurs, whose obligations to customers are framed by contracts and product safety laws. Boutique medicine, unless exclusively boutique, divides a practice into two tiers and by default dispenses different levels of care.¹ All patients deserve the interest and concern of their physicians; having added affection for a patient is a welcomed but not essential aspect of medical care.

Care is perhaps the word most closely associated with medicine. Physicians are caregivers whose purpose is to care for patients through endeavors collectively termed medical

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care. Care for patients should be based on their clinical needs assessed in professional clinical judgment, not personal relationships. As professionals, physicians should provide all patients high-quality health care independent of personal relationships. Caring persons recognize the importance of the cared for, either from concern or affection. Affection is an emotional feeling for patients, whereas concern focuses on problems with the patient's health. Although the importance of the patient is likely the same in both situations, concern is more objective and rational, whereas affection indicates an emotional fondness for the person. When the balance of focus shifts too much toward affection-driven care, danger of emotional clouding of sound professional judgment enters.²

Further clouding of sound professional judgment can occur when the physician feels gratitude toward the patient. The most common situation generating gratitude often is when a thankful patient offers the physician a gift. Gratitude can engender indebtedness, especially if the offered gift is more than something of routine value. Reciprocation within a patient-physician relationship can devolve into an extraordinary treatment regimen. Unwarranted departures from routines, "blue plate specials," in surgical therapy are dangerous. Also, obligations of reciprocity can threaten the professional ethical concept that each patient is equally a patient. It is for these reasons that accepting gifts should be done with considerable reflection and care³ and why it has recently been proposed that seeking philanthropic gifts from grateful patients should be undertaken by development professionals and not by the grateful patient's physician.⁴ The American College of Surgeons Code of Professional Conduct does not address financial relationships with patients directly.⁵ Indirectly, relationships or behaviors that would lessen the quality of care, compromise honesty of disclosure, reduce respect for patients and families, or adversely affect community medical care would not be acceptable.

Option A assumes that M.O.'s offer to the surgeon to invest in his high-tech, potentially very lucrative venture is ethically risk-free. At the very least, such a view is naïve; at worst, it denies that accepting the generous offer poses a moral risk to one's professionalism. Self-deception, as Plato has Socrates teach us again and again in his dialogues, is the one sure path to ethical quagmire. Option A is slightly off point.

Option B makes the erroneous assumption that accepting M.O.'s offer is a straightforward violation of one's professionalism and thus ethically prohibited. The strongest conclusion that the above ethical reflection supports is that accepting gifts in the form of an offer to invest with a grateful patient is fraught with risk to your professionalism. The question is whether the risk should be judged ethically manageable.

Unlike certain prohibited romantic interests with patients or their surrogates,⁶ legitimate investments outside the medical field should have no moral problems and especially no legal prohibitions. An attorney is unnecessary, especially in regard to ethical advice. Option C is unnecessary from an ethical point of view but is, of course, legally prudent to implement if you judge M.O.'s offer is ethically acceptable.

The surgeon has been paid for surgical care. Investing in a nonmedical, for-profit venture is a separate issue. And although M.O. has been successful in the past, there is no sure thing in investing. Remember the many stock-pickers who lost big chunks of client's wealth in the last recession, and Madoffism as well. Option D is incorrect.

Investments with M.O. will certainly influence future affection for the tycoon. Whether this change distorts your professional commitment to keep each patient equal as a patient is the core ethical issue. The amount of money that you could make, if the investment turns out to be as successful as anticipated, is far beyond the value of routine gifts from patients. The concomitant degree of gratitude will be considerable. In this regard the American Medical Association cautions: "Some patients may attempt to influence care or to secure preferential treatment through the offering of gifts or cash. Acceptance of such gifts is likely to damage the integrity of the patient-physician relationship."³ What M.O. is offering, however, is not a gift; it is a business opportunity with the associated, unavoidable risk of financial loss. Gifts do not include such risk. Wise investors remember that rewards and risks are always proportional. Also, after this last postoperative clinic visit, M.O. is considered to be discharged from care and, thus, is no longer your patient. Should M.O., or one of his family members, friends, or business associates need your help in gaining rapid access to care, he may well expect your prompt delivery but that is exactly what you always do for any of your past patients. Option E therefore should be implemented. Money never sleeps, even at times when it should.

REFERENCES

1. Jones JW, McCullough LB, Richman BW. Ethics of boutique medical practice. *J Vasc Surg* 2004;39:1354-5.
2. Oberheu K, Jones JW, Sade RM. A surgeon operates on his son: wisdom or hubris? *Ann Thorac Surg* 2007;84:723-8.
3. Code of medical ethics: opinion 10.017—gift from patients. Vol. 2011. AMA Council on Ethical and Judicial Affairs. Chicago: American Medical Association.
4. Chervenak FA, McCullough LB, Fraley M, Golding J. Ethics: an essential dimension of soliciting philanthropic gifts from donors. *Am J Obstet Gynecol* 2010;203:540 e1-4.
5. Code of professional conduct. *J Am Coll Surg* 2003;197:603-4.
6. Jones JW, McCullough LB, Richman BW. Ethical nuances of combining romance with medical practice. *J Vasc Surg* 2005;41:174-5.