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Refusing to treat due to lack of PPE: Brief insights and analysis | Olinda Timms

The context

The Covid-19 pandemic has once again exposed the many deficiencies in our health system and its lack of preparedness in a health crisis. The unfolding pandemic revealed higher infectivity levels, and unpredictable outcomes of infections that escalated the risk level to 'unacceptable'.

During such a pandemic, it is essential to put in place protective measures for health care providers, to prevent avoidable infections. It is in this context that the ethical dilemma surfaced regarding the right of Health care providers (HCPs) to refuse to treat patients, both Covid-19 and non-Covid-19, without access to adequate PPE. In these circumstances, even patients recognize the burden of risk faced by HCPs as frontline human workforce without necessary protection from infection. Some patients, as well as some doctors, expect the doctor's duty to care to trump all other concerns. But doctors are concerned about carrying infection to colleagues, other patients, and to their family members. Drawing upon ongoing conversations on this ethical dilemma from around the world, a discussion of key aspects could suggest the way forward in response to this ethical dilemma in the Indian context.

Whose responsibility is it to ensure availability of PPEs?

HCPs are acutely aware that the duty and responsibility to supply adequate PPE lies firmly with the hospital management and governments. Even so, with or without adequate supplies, the HCPs are expected to ensure uninterrupted health services at any cost; more so in a pandemic. In India, insufficient health infrastructure and supplies is a chronic concern, particularly in the government-funded public health care system. This understandably creates a backlash. The instances of violence against doctors we witness in India can be attributed to the poor quality of healthcare and of the health care system.

Both options –treating patients without adequate PPE, or abandoning their duty to treat the patient - being ethically unacceptable to HCPs, the level of moral distress they experience is high. Additionally, the attempt to balance rights and responsibilities in the midst of the evolving crisis and uncertainty polarises the discourse between stakeholders and authorities.

The debate on this ethical dilemma across the world is focused on health care providers' right to refuse to care during pandemics without adequate safety measures, especially PPEs. Most ethical

guidelines for doctors align with The World Medical Association (WMA) Declaration of Geneva that 'the health and well-being of my patient will be my first consideration'. A principled approach broadly interprets this as compassionate care of the sick, beneficence and non-maleficence, respectful of the autonomy of patients in decisions, in a manner that is just and non-discriminatory. It certainly does not imply that doctors should place their lives and health at risk in the endeavor, which would be counterproductive to the objectives of healthcare. The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 in Chapter 2.1 Obligations to the Sick states "Though a physician is not bound to treat each and every person asking his services, he should not only be ever ready to respond to calls of the sick and injured, but should be mindful of the high character of his mission and the responsibility he discharges in the course of his professional duties". Furthermore, in Chapter 5.2 Public and Community Health, it states, "When an epidemic occurs a physician should not abandon his duty for fear of contracting the disease himself". It is a testament to the ethics of care prevalent among HCPs that their national voluntary organization, the Indian Medical Association has worked with the Government for adequate PPE so that medical services continue interrupted.

Reciprocal obligations are discussed in Chapter 13 'Frontline response workers' rights and obligations' of the WHO document 'Guidance for managing Ethical Issues in Infectious Disease Outbreaks' (2016). After listing the many obligations of society to frontline workers, it says, "If the reciprocal obligations are not met, frontline workers cannot legitimately be expected to assume a significant risk of harm to themselves and their families". To be effective, such guidance requires endorsement and contextual application at country level by Governments and medical councils, taking into account local resource and needs. For many countries, the social obligations to the health worker as listed in the document are not fulfilled even in non-pandemic situations, while the responsibilities of health workers prevail, making it harder to justify abandonment of professional duty in crisis times.

Medical professional associations in other countries have provided some guidance in response to this issue. In the current pandemic, it is argued that it is the obligations of governments and employers to ensure provision of PPEs. In Canada, the *Ontario Occupational Health and Safety Act* (Part III.25) and its regulations state that employers must ensure that equipment, materials, and protective devices are provided to their workers. The British Medical Association advises its members that doctors should not face disciplinary action if they refuse to treat without adequate PPE. The Medical Protection Society (MPS), UK has also shares this view point. Furthermore, the Medical Director, MPS supports the idea that doctors should be afforded impunity from investigations in this situation, by employers or even General Medical Council (GMC), UK in case patients came to harm. The GMC acknowledges this challenging context for doctors and therefore would trust professional judgment of doctors relating to use of GMC guiding principles on the ground. Similarly, the Royal College of Nursing Union says nurses could refuse to work under certain conditions, as a 'last resort'. Legal counsel has opined that doctors could have a good case in defense of their action if it were ever questioned. It is interesting to note that authoritative entities, such as National Health Services (NHS) or National Institute of Health and Care Excellence (NICE), in the UK do not provide concrete guidance on this matter.

However, refusal to treat has not been specifically addressed in any ethical guideline. Even those written for COVID-19 tended to focus on resource allocation and research during epidemics. Most governing bodies including the Indian Ministry of Health and Family Welfare do not go beyond

strongly urging hospitals and administrations to ensure adequate PPE for all health workers during this crisis. Likewise, 'COVID-19 Pandemic: Guidelines for Ethical Healthcare Decision-Making in Pakistan' developed by the Centre of Biomedical Ethics and Culture, SIUT, Karachi, Pakistan also merely mention that it is the responsibility of institutions (employers) and concerned government authorities to ensure supply of PPEs to HCPs. It is silent on responsibilities, obligations or liabilities of HCPs if they refuse to work in absence of PPEs.

Way forward for India

This ethical conundrum was unanticipated; a dilemma that need never have arisen. It strikes at the very heart of the profession-- the duty to care, even when the doctor's life is at risk. It is a failure of society that doctors are treated poorly and their lives endangered, when they are so desperately needed. Medical students are silent witnesses to this indifference, and to what they may have to face in their careers. The choice of a career in medicine could lose its sheen, further worsening the health care crisis in this country.

It is essential for the concerned government offices to immediately respond to shortage of PPEs and ensure safety of the all HCPs. Conspicuous by its absence is any substantive or concrete guidance from professional councils on this ethical dilemma and related issues confronted during pandemics. Public health response at the Central or State level has been broadly prescriptive regarding infrastructure and manpower capacity, stressing on professional duty rather than societal obligations to protect health workers. Developing such guidance at the State level, within the framework of operational instructions for HCPs and hospitals, refraining from threats and punitive measures but focused on compliance with minimum protective standards, holds salience both in the short and long term if HCPs are to work effectively despite critical resource shortages in these pandemic situations.

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