

MEDICINE AND THE LAW

Medical ethics and the payment of fees before treatment

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whether refusal to treat before payment represents abandonment of a patient.

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Is it ethically acceptable for doctors to require payment of fees before treatment? This depends on interpretation of the ethical rules of the profession, the circumstances of the doctor-patient relationship, the urgency of the patient's need for treatment, and whether refusal to treat before such payment is an abandonment of a patient.

Ethical rules of the profession

The Declaration of Geneva Physician's Oath requires graduating doctors to declare: 'The health of my patient shall be my first consideration.'¹ The World Medical Association (WMA) International Code of Ethics (1949) states: 'A doctor must practice his [her] profession uninfluenced by motives of profit.'² The Health Professions Council of South Africa (HPCSA) Rules of Professional Conduct state that practitioners should always 'act in the best interests of [their] patients' and 'maintain the highest standards of personal conduct and integrity'.³ The WMA declarations and the HPCSA rules indicate that doctors should put their patients' health interests before questions of payment. However, this must be seen in the light of the ethical principles of patient autonomy, beneficence, non-maleficence and fairness or justice.⁴

Patient autonomy⁵ requires doctors to respect the freedom of patients to make their medical treatment decisions. Apart from issues such as the right of patients to give informed consent⁶ or to have their privacy protected,⁷ patients can also decide to join a medical scheme or pay cash for their treatment. If they have joined a medical scheme they may still decide to consult a doctor who has contracted out of the medical scheme tariffs and to bear the additional treatment costs. Patients exercise their right to autonomy by accepting that they have to pay for their treatment according to the terms and conditions of their agreement with their doctor.

The principles of beneficence⁸ and non-maleficence⁹ require doctors to do good for their patients and not to harm them. This is consistent with the provisions of the Declaration of Geneva,¹ the International Code of Ethics² and the HPCSA rules.³ If patients who are not members of a medical scheme (or who consult a doctor who has contracted out of the medical scheme tariffs) cannot pay in advance for their consultation, if doctors decide not to treat the patients, they must

still act for the benefit of the patients and ensure that their health is not harmed. If this is not a medical emergency, the doctor could refer the patient to a public clinic or hospital with a covering letter. Patients who are members of medical schemes who cannot afford to pay contracting out doctors, could be referred to colleagues who have not contracted out of medical scheme rates.

The principle of fairness or justice¹⁰ requires doctors to treat their patients fairly or justly. Patients who cannot afford to pay in advance for their treatment should be treated fairly by taking into account their personal circumstances before doctors decide whether or not to treat them, e.g. a doctor may decide to treat a regular patient who has not paid her bills recently because she has just lost her job. Alternatively, if not an emergency, the doctor may refer the patient to a public facility with a covering letter. The circumstances may justify a doctor refusing to treat a first-time patient who cannot afford to pay cash in advance, but it may be unfair to refuse to treat a regular patient who cannot afford to pay because of a temporary cash-flow problem.

The doctor-patient relationship

Except in emergencies or for unconstitutional reasons, doctors may legally accept or refuse patients as they wish.¹¹ However, once accepted, the doctor enters into a contractual relationship with the patient.¹² In this relationship, the terms of the contract are usually implied,¹³ except perhaps concerning payment of fees, which is usually (and should be) spelled out in advance.

Terms that doctors agree to in a doctor-patient contract include: (i) diagnose and treat complaints; (ii) treat complaints in the normal manner; (iii) obtain informed consent before treatment; (iv) respect patients' confidentiality; (v) treat patients personally unless referral to a third party is necessary; (vi) treat patients with reasonable skill, competence and care; and (vii) do not abandon patients until they are cured or other arrangements for treatment have been made.

Conditions that patients agree to in a doctor-patient contract include: (i) make themselves available for treatment; (ii) carry out the doctor's instructions; (iii) keep appointments – they may be liable for lost fees without proper notice of cancellation; (iv) return for follow-up treatment; and (v) pay private doctors' accounts or arrange for their medical aid to do so. The Health Professions Act provides that the fee charged to patients must be reasonable and that a detailed account must be given to the patient within a reasonable period.¹⁴

Where in a contract persons undertake to do something for a specific price they are bound by that price, unless there is an agreement to the contrary, even if additional services are rendered. If there was no agreement about fees for additional services the person may only claim for the cost of the materials used and not the professional service rendered. Therefore, if doctors spend an inordinate amount of time with patients they can only charge the

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usual consultation fee and for the cost of any materials used – not for the extra time spent, unless this was part of the agreement.

Once there is a doctor-patient relationship, all the ethical principles regarding the relationship come into play. As a result, a doctor may not abandon a patient on the grounds that the latter is unable to pay in advance for treatment without making alternative arrangements.

Urgency of need for treatment

Doctors have an ethical and a legal duty to provide medical treatment in medical emergencies. Emergency medical treatment is required where medical treatment is necessary because a person's life or health is in serious danger as a result of disease, injury or ill health.¹⁵

The Constitution¹⁶ and the National Health Act¹⁷ refer to 'emergency medical treatment'. The Constitution states that 'no one may be refused emergency medical treatment',¹⁸ which the Constitutional Court holds to mean a 'dramatic, sudden situation or event which is of a passing nature in terms of time' and not a chronic terminal illness (e.g. kidney disease requiring dialysis).¹⁵ The National Health Act provides that 'a health care provider, health care worker or health establishment may not refuse a person emergency medical treatment'.¹⁷ Apart from the law, there is an ethical obligation upon health professionals to provide assistance in emergencies, even if this conflicts with their religious or other beliefs.¹⁸

Legally^{16,17} and ethically,¹⁸ where emergency medical treatment is required, doctors cannot refuse to treat persons who cannot afford to pay in advance, which applies whether this is a first-time or regular patient. For a first-time patient the doctor must stabilise the patient and then refer him or her to a public hospital. For a regular patient it will depend on the circumstances, e.g. the doctor must provide the emergency care, and once a patient not on medical aid is stabilised, may after consultation with the patient or their proxy decide whether to continue to treat or refer the patient to a public hospital. Doctors who have contracted out of medical scheme rates must stabilise a patient on medical aid, and then after consultation with the patient or their proxy, refer the patient to another practitioner prepared to treat the patient at medical scheme rates.

Abandonment of patients

A patient is abandoned when a doctor ceases treatment before the patient has recovered or has terminated his or her contract with the doctor,¹⁹ and the doctor does not refer the patient to another practitioner or institution that can continue such treatment. Thus a patient is abandoned 'when a physician interrupts a course of necessary treatment without proper notice and referral to a subsequent practitioner'.²⁰ A doctor who abandons a patient without referral to another doctor or arranging for their further treatment will be liable for damages.²¹ Therefore, if a doctor undertakes treatment for a patient, such treatment may not be abandoned if it would harm the patient – unless the patient makes it impossible for the doctor to treat him or her.²¹ For example, an inability to pay may make it impossible for a doctor to prescribe a treatment regimen. The treatment may be terminated, but the patient should then be referred to a public health facility or another practitioner for treatment.

Doctors who have contracted out of medical scheme rates and refuse to treat patients who cannot afford to pay for treatment in advance will escape liability for abandonment if they refer such patients to a public health facility or a colleague prepared to treat at medical scheme rates.

When is it ethically justified to request payment before treatment?

Demanding payment before medical treatment is suggested to be ethically justified in non-emergency situations: (i) when patients belonging to medical schemes are informed in advance that the doctor has contracted out of medical aid and they can afford to pay for the treatment and then recover part of the amount from their schemes; or (ii) when patients who do not belong to a medical scheme are informed beforehand that they must pay in advance, and can afford to pay for the treatment.

These situations satisfy the bioethical principles because the principle of patient autonomy is met if the patient decides to pay cash, and the principles of beneficence, non-maleficence and justice or fairness are met if the patient can afford to pay.

Payment before treatment is not considered ethically justified for refusing to treat a patient who cannot afford to pay in the following situations: (i) in a medical emergency when the patient must be stabilised and then referred to a public health facility or to a doctor who the patient can afford to consult (e.g. through a medical aid scheme); (ii) when refusal to treat the patient is not linked to referral to an appropriate public health facility or other facility, as it may constitute abandonment of the patient; or (iii) when a returning patient who has a good record of payments in advance is temporarily short of money and requires ongoing treatment.

These situations do not satisfy the bioethical principles because patients cannot exercise autonomy, as they have no choice because of their financial position. They also do not satisfy the principles of beneficence, non-maleficence and justice or fairness because the doctor is not doing good for their patient, is harming the patient, and is not treating the patient fairly.

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