Ethics Consult: Mask Reuse Walkout: MD/JD Bangs Gavel

— You voted, now see the results and an expert's response

by Jacob M. Appel MD, JD April 17, 2020

Welcome to Ethics Consult -- an opportunity to discuss, debate (respectfully), and learn together. We select an ethical dilemma in patient care, you vote, and then we present an expert's judgment.

Last week, you voted on the ethics of walking out of a job over mask reuse. Here are the results from more than 6,000 votes:

Is it ethical for the doctor to stop working?

Yes: 74.43%

No: 25.57%

Would you change your opinion if the doctor was over 60?

Yes: 15.89%

No: 84.11%

Would you work in a facility with COVID-19 cases and reuse a mask?

Yes: 48.92%

No: 51.08%

And now, bioethicist Jacob M. Appel, MD, JD, weighs in:

The question of whether healthcare providers must risk their own lives to serve the public, and under what circumstances, is one of the most enduring in medical ethics. Historically, doctors often bolted from pandemics -- as Galen, the celebrated Roman physician, did in 166 A.D. during the Antonine Plague. The philosophy of medieval clinicians, according to medical historian and physician Jessica Mellinger, was to "flee early, flee far, and return late." The record of American physicians in the eighteenth and nineteenth centuries was more mixed.

For instance, Benjamin Rush -- namesake of Chicago's Rush University Medical Center -- owes part of his fame to his efforts (not by any means unique) to save patients during Philadelphia's bout with yellow fever in 1793. At present, the American Medical Association's Code of Ethics states that "individual physicians have an obligation to provide urgent medical care during disasters" and that "this obligation holds even in the face of greater than usual risks to physicians' own safety, health, or life."

Since the number of physicians is tightly regulated -- medicine is better thought of as a guild with high barriers to entry, rather than a genuine marketplace -- it makes ethical sense to impose some additional duties of doctors. Whether similar expectations should apply to nurses, whose numbers are generally not kept artificially low by state or professional action, is more complex. The American Nurses Association's Code of Ethics for Nurses with Interpretive Statements notes that nurses have duties to their patients but also an obligation to protect their own welfare.

A duty to accept additional risks does not mean a duty to accept all risks. We may ask our transplant surgeons to brace infection in the operating theater, but we do not expect them to donate their kidneys to patients in need. Some inherent increased risk will inevitably arise to providers treating any infectious disease, even under ideal circumstances, and those risks are likely to be magnified during a public health crisis. These risks alone do not justify abandoning patients to their fates. For example, during the early AIDS epidemic in the United States, the small risk of transmission between patient and provider, such as through needlestick, was widely rejected as a basis for refusing care.

However, at some threshold, increased risk rises to a level where it should not be forcibly or coercively imposed. That line is subjective. It depends upon the empirical question of how much risk is actually involved in a particular endeavor, such as reusing PPE, but also upon the question of how much additional risk we as a society believe it is ethical to demand of our first-line workers. It is worth noting that, at least at this stage of the COVID-19 pandemic, the risk may not be entirely known, further complicating the assessment.

Any approach to forcing physicians or nurses to take risks during a pandemic must balance short-term need against long-term societal and healthcare consequences. Compulsory risk may lead many talented individuals to leave

healthcare professions and others to avoid such careers altogether. Finally, one should be wary of asking nurses to take risks they will simply refuse. One of the reasons we do not require priests to testify in court to matters they hear in the confessional -- even during high-stakes trials -- is that they would refuse, and our society finds the notion of sending priests to prison for contempt of court rather unpalatable. Similarly, demanding nurses take excessive risks could simply lead them to turn in their swan caps, leaving patients no better off and the system with fewer capable caregivers.

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