

**CASE AND COMMENTARY: PEER-REVIEWED ARTICLE**

**How Should History of Physician Involvement in the Holocaust Inform How Physicians Approach Employers?**

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**Abstract**

In response to a case involving an advertisement for a physician to work in a private detention center housing asylum seekers and immigrants, this commentary considers ethical obligations of physicians responsible for detainees' health care. The commentary also suggests key points a physician should make during a job interview at a detention center and concerns a physician might articulate about caregiving practices for detainees.

**Case**

In July of 2019, with the United States in the throes of a heated debate over how the nation should manage rising numbers of immigrants and asylum seekers crossing the southern US border, a job opening was posted for a physician to care for immigrants being detained by the government. The job opening was posted by a private, for-profit company that holds government contracts to provide health care services in prisons and detention settings. The job post offered a \$400 000 annual salary for a physician with just 2 years' experience, stated that physicians must be "philosophically committed to the objectives of this facility," and listed no specific requirements related to clinical experience, training, or certifications.

Dr H is a 34-year-old native of the same state housing the detention facility who is 3 years out from completing a residency in family medicine. Dr H notices the job is for a primary care physician in a rural region, where the cost of living is relatively modest, making the proposed pay remarkably high. Dr H is generally sympathetic to the basic problem the employer faces, eager to care for detained immigrants, and personally sympathetic to the political assertion that unrestrained immigration across the southern US border poses a threat to the nation and should be stopped. Dr H is intrigued about the job but caught short by the "philosophical commitment" quotation and wonders what it could mean. Suspicious that the post could be suggesting that the employer is willing to pay a great deal to convince physicians to overcome any ethical qualms they might have about the employers' practices related to care of immigrants in an overcrowded government-funded private detention center, Dr H comes to you for advice about whether to apply and, if she were to apply, how to approach the recruitment process and the job, if offered.

## Commentary

This case of Dr H, a young, inexperienced physician who is considering applying for work in an immigrant detention center, poses a number of issues—some straightforward, others involving judgment and discernment. We explore how the physician might navigate the recruitment process and, ultimately, the job. In other words, under what conditions could this doctor claim that her work is ethical? Of great importance is identifying the ethical lines Dr H should articulate as uncrossable during job interviews.

This case is simple in its major premise. Dr H must always keep in mind what physicians do: respond with care to health-related needs of their patients. Dr H must be reasonably sure that she is taking a job that enables her to honor her **obligations as a physician**. To talk about political sympathies, political parties, or being “philosophically committed to the objectives of this facility” only creates unnecessary confusion about whether those obligations can be met. Dr H must be first and foremost philosophically committed to the obligations of being a physician.

Lessons of the Holocaust are relevant to Dr H’s concerns about the job post. The term *Nazi doctors* was an oxymoron.<sup>1</sup> By adopting the means and ends of National Socialism, Nazi doctors were no longer physicians in any normative sense. In carrying out the horrific T4 “euthanasia” program of persons with disabilities and other infirmities, Nazi physicians did not act in individuals’ interests, much less their significant health interests, or on any *prima facie* moral duty but instead abetted a eugenic state looking to exterminate these members of society.<sup>2</sup>

### Dual Loyalties?

In a detention center, a duty to an employer can come into conflict with a duty to a detainee-patient.<sup>3</sup> Some employ the language of *dual loyalties* to depict physicians’ conflicting duties to a patient and their duties to a state. **Dual or competing loyalties** can pose an ethical dilemma for physicians when a duty to keep information about a patient confidential, say, conflicts with their general duty to be truthful. Such are genuine and long-recognized dual loyalties. Similarly, physician-researchers have dual loyalties to the good of a particular patient and to generalizable knowledge that will benefit other patients. Both are legitimate ends of the health professions, and it is well chronicled that the latter duty played a significant role in atrocities committed by Nazi physicians.

An employer can expect that any employee, including a physician, will follow certain established or agreed-upon means of dealing with ethical concerns. Loyalty to one’s employer in following defined processes can strain one’s loyalty to the patient. Nevertheless, as long as those processes are somewhat responsive, a physician employee is still practicing as a physician and within the scope of a physician’s duty. However, we do not believe that physicians have dual loyalties in situations that simply pit the interests of an employer or a state in punishing a person against the medical needs of that person,<sup>4</sup> so we find it unhelpful to speak in terms of dual loyalties in this case.

Caring for detained migrants is akin to caring for patients experiencing incarceration in other environments, such as in the US penal system.<sup>5</sup> A physician’s opinion on penal code or on a patient’s guilt or innocence does not matter. At all times, physicians who care for patients experiencing incarceration have a duty to advocate for their health-related needs and basic human rights.<sup>6</sup> Physicians can, in no way, be agents of punishment, either by directly or indirectly facilitating neglect or inadequate care; to do

so is to violate defining ends of their role and recognized norms of medicine and would justify disciplinary action, including possible revocation of their licenses to practice medicine by a state medical board.

### **Prerequisites for Ethical Physician Employment**

Only 3 years out of residency, Dr H, like many physicians, might have student loan debt that makes a high salary appealing. Dr H might have sufficient experience to handle most of the medical needs she encounters among detainees, but the job could place Dr H in diagnostic and treatment situations for which her professional judgment is not sufficiently developed for her to operate in isolation. Physicians usually benefit from senior colleagues' experience and learn from each other, so it is important for any physician who takes this job to have adequate backup, referral systems, and good colleagues. For instance, Dr H must confirm that physicians at the detention facility retain full authority to send a patient to a hospital when needed and to make medical decisions subject only to review by others with medical expertise, not by company administrators who lack such expertise.<sup>7</sup> Dr H should require that patients in her care be able to access preventive and acute care that approximates a reasonable standard of care. For instance, flu shots are considered routine and possibly life-saving preventive care in the United States. To deny them to persons in custody of the federal government for an extended period is to levy a kind of *de facto*, unadjudicated punishment to detainees (for immigrating), and administering punishment of any kind is not within the scope of any clinicians' duties as a professional.

### **Requirement Not to Collaborate in Evil**

Any physician working in a detention or incarceration environment must be prepared to navigate situations in which **detainees are treated inhumanely**. For instance, denying parents' roles in consent to treatment and decision making for their children and detaining children separately from their parents and in cages without adequate supervision or hygiene is trauma inducing and violates basic human decency. There is no justification for such conditions, which obviously incur suffering and harm among these children. Because a physician may not participate in perpetrating inhumane acts, if Dr H takes this job, will she oppose these conditions or become complicit in their imposition, or do something else?

Physicians are ethically prohibited from participating in the execution of a person,<sup>8</sup> but they can attend to the health needs of patients experiencing incarceration who are convicted of capital crimes. Relieving such patients' pain and suffering and fostering quality of life should not be seen as cooperating with an eventual execution. To be clear, simply working for institutions that perpetrate inhumane acts is not necessarily contrary to a physician's vocation, as long as the physician attends to detainee-patients' well-being and does not participate in or make possible inhumane acts against them.

Health care delivery also cannot be an intrinsic part of or intended to further even a legally authorized punishment. For instance, the American Medical Association (AMA) *Code of Medical Ethics* states that a physician cannot seek to relieve a patient's psychotic episode for the purpose of maintaining that patient's mental capacity to fulfill their death sentence<sup>8</sup> because a physician in such a case would intentionally facilitate punishment. Realistically, it would seem that few things a physician would be asked to do in a detention facility would fall under the purview of the AMA *Code* opinion on execution, but one can easily imagine a physician being asked, say, to collect DNA from an asylum seeker who has not given consent. Carrying out such a request would be a

direct violation of an asylum seeker's rights and would not serve any health-related need of that detainee.<sup>9</sup> It is important for physicians applying for this job to be aware of the potential for an abundance of ethically compromising job expectations and to express adherence to basic principles of medical ethics during the job interview and course of employment. The employer should accommodate physician exemption from practices that violate duties to patients.<sup>10</sup>

Other key issues that Dr H should ask about during the job interview are these: the administrative channels available to her to register a complaint when she observes inhumane treatment of detainees and transparency in processes by which complaints are reviewed and decided upon. Since Dr H would be working for a private corporation, not the federal government, public command chains cannot be relied upon as a source of accountability.<sup>5</sup> It's not clear what a private corporation with a government contract for running detention facilities would offer in terms of transparency, so Dr H should express her general unwillingness to sign nondisclosure agreements and demand full respect for her professional autonomy and freedom of speech.

Another consideration is that employment of physicians by a company with a vague "philosophical commitment" requirement will normalize and confer legitimacy upon ethically dubious institutions or their practices, simply through physicians' membership in the medical profession. It might be useful to analyze this situation in terms of an old concept from Catholic moral theology, *scandal*,<sup>11</sup> defined as leading people to do evil by setting an example or setting up social institutions (perhaps a detention facility) in a way that can lead people to see an evil as a good. It is not hard to imagine the company or the government portraying the conditions of the detention facility in a positive light due the presence of a staff physician. The upshot here is that physicians must be able to mitigate scandal by their recognition of evil, courage to speak up against it, and ability to speak up against it.

### Dual Loyalties Revisited

A private employer might reasonably expect a physician to utilize agreed-upon channels of redress for complaints and not immediately speak to the media. The company's stipulating that Dr H may access health-related federal authorities when concerned about inhumane treatment or request independent consultation with an appropriate expert might be means by which Dr H could fulfill her obligations to her employer and her patients. If neither channel helps to rectify inhumane conditions, to avoid complicity in doing harm, Dr H might have no other ethical recourse than to resign. Nazi physicians' complicity in evil suggests the ease by which atrocities can be normalized, particularly with broader state sanctioning. In a corrupt regime, an expectation of state regard for ethical values such as accountability and transparency might be held only by the most naïve or ill-informed.

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**Editor's Note**

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