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Trafficking in Human Beings for the Purpose of Organ Removal and the Ethical and Legal Obligations of Healthcare Providers

Timothy Caulfield, LLB, LLM,¹ Wilma Duijst, PhD,² Mike Bos, MA, MSc,³ Iris Chassis, MBA,⁴ Igor Codreanu, MD,⁵ Gabriel Danovitch, MD,⁶ John Gill, MD, MS,⁷ Ninoslav Ivanovski, MD, PhD,⁸ and Milbert Shin, LLM⁹

Abstract: Physicians and other health care professionals seem well placed to play a role in the monitoring and, perhaps, in the curtailment of the trafficking in human beings for the purpose of organ removal. They serve as important sources of information for patients and may have access to information that can be used to gain a greater understanding of organ trafficking networks. However, well-established legal and ethical obligations owed to their patients can create challenging policy tensions that can make it difficult to implement policy action at the level of the physician/patient. In this article, we explore the role—and legal and ethical obligations—of physicians at 3 key stages of patient interaction: the information phase, the pretransplant phase, and the posttransplant phase. Although policy challenges remain, physicians can still play a vital role by, for example, providing patients with a frank disclosure of the relevant risks and harms associated with the illegal organ trade and an honest account of the physician's own moral objections. They can also report colleagues involved in the illegal trade to an appropriate regulatory authority. Existing legal and ethical obligations likely prohibit physicians from reporting patients who have received an illegal organ. However, given the potential benefits that may accrue from the collection of more information about the illegal transactions, this is an area where legal reform should be considered.

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Trafficking in human beings for the purpose of organ removal (THBOR) and human organ trade are universally condemned.¹⁻³ However, despite efforts to curb and to elucidate the illegal nature of the practice, the buying and selling of organs continues,⁴ involving patients traveling to countries throughout the world. It has been estimated that approximately 10% of all transplants may occur illegally.⁵

Before travel, patients will often—of necessity—discuss their plans with their home jurisdiction health care provider, usually a physician who is a transplant professional, a nurse, or a social worker.⁶ This interaction may include questions

about the transplant process and the destination country and/or a request for relevant medical records and supporting documentation.⁷ In addition, returning patients will often re-engage with their home country physician for their required follow-up care.

Given this interaction, physicians and other health care professionals seem well placed to play a role in the monitoring and, perhaps, the reduction of organ trafficking practices.⁸ They serve as important sources of information for patients and may have access to information that can be used to gain a greater understanding of organ trafficking networks. However, well-established legal and ethical obligations owed

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¹ Health Law Institute, University of Alberta, University of Alberta, Edmonton, Canada.

² Radboud University Medical Centre, Nijmegen, The Netherlands.

³ Eurotransplant International Foundation, Leiden, The Netherlands.

⁴ National Fraud Unit, Israeli Police, Israel.

⁵ Renal Foundation, Moldova.

⁶ University of California, Berkeley, CA.

⁷ University of British Columbia, Vancouver, BC, Canada.

⁸ University of St. Cyril and Methodius, Republic of Macedonia.

⁹ United Nations, Republic of Liberia.

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Correspondence: Timothy Caulfield, Health Law Institute, University of Alberta, Edmonton, Canada. (caulfield@ualberta.ca).

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to their patients can create challenging policy tensions that can make it difficult to implement policy action at the level of the physician/patient.

In this article, we outline the potential role of physicians during 3 key phases of the physician patient interaction. The first is the phase when the patient is investigating all the clinical options, including the possible purchase of an organ. The second phase is when the patient has made up his mind and has chosen to pursue the purchase of an illegal transplant. And the third phase is posttransplantation. Below, we briefly explore the legal and ethical tensions at each phase and offer recommendations on how best to negotiate the relevant professional norms. Although there are health care professionals involved throughout the organ trafficking process, the focus in this article is on the role of physicians with patients considering the illegal procurement of an organ. It should also be noted that although the focus of our analysis has been on ways to eliminate THBOR, this article considers illegal organ transplantation on a broader scale. This is because physicians may not be aware if THBOR is involved in their particular patients' situation. As such, from the perspective of the relevant physician, and for the purposes of this article, the most salient issue is the decision by a patient to purchase an organ. Of course, addressing this broader issue also helps to address the critical issues associated with THBOR.

INFORMATION PHASE

Numerous studies have suggested that patients discuss their medical tourism plans with their physicians.^{6,9,10} This may include questions about transplant options and the appropriateness and safety of an organ trafficking procedure. At this phase, physicians should also be alert to patients who may be interested or tempted to buy an organ—even if not explicitly noted by the patient. Physicians should provide information to the patient about the ethical issues associated with illegal buying an organ and an honest assessment of the health risks, such as possible complications and a lack of clinical continuity.¹¹ The physician should also consider discussing the dangers for the organ donor,^{12,13} particularly if there are signs that the patient is going to a country where donors are being paid poorly, treated badly, or even being killed for their organs.⁵ There are questions around whether the informed consent obligation—buttressed in some jurisdictions by fiduciary duties¹⁴—creates an obligation to disclose to desperate patients the availability of organs “for sale.”^{15,16} However, given the risks associated with the practice and the clinical uncertainty involved and the fact that it is illegal in all countries (except Iran)—to say nothing of the social harms—this would seem to fall outside the traditional bounds of the disclosure obligation.

Although physicians likely do not, technically, owe a legal duty to the individual providing the organ,¹⁷ disclosure of the relevant ethical issues and social harms would seem to be something a reasonable person in the patient's position would want to know and, as such, would fit with existing consent law.¹⁸ Moreover, as members of the medical community, all physicians have responsibilities to society and the health of others, as recognized in professional codes of ethics.¹⁹

In addition, in some jurisdictions, physicians may have a responsibility to disclose their personal views, particularly if they conflict with a patient's treatment decision.¹⁹ Such a

conflict may impact the physician/patient dynamic and, as such, seems something that should be disclosed as part of a physician's fiduciary and consent obligations.¹⁴

Given this disclosure responsibility, there is a growing need to ensure relevant health care providers have the knowledge necessary to provide patients with the relevant information (see, for example, www.declarationofistanbul.org). Resources should be made available that provide clinicians with a concise summary of the facts and ethical concerns about organ trafficking most relevant to this phase of the physician/patient interaction.

PRETRANSPLANT STAGE

Once a patient has decided to purchase an organ, additional legal and ethical challenges emerge. In such situations, doctors must continue to act in the best interest of their patients, including performing appropriate investigations and prescribing medications that are necessary for current clinical management. Also, of course, the patient maintains all his/her legal rights. These rights are not eroded as a result of the patient's “wrong” decision.

For example, in most jurisdictions, patients retain the right to access and obtain a copy of their medical record.^{20,21} This right is often supported by both legislation²² and case law.^{14,23} As such, if a patient requests a copy of his/her medical record, it must be provided (most jurisdictions allow for the charging of a reasonable fee) even if the physician knows the information will be used for the purchase of an organ. However, physicians have no obligation to take any actions that would facilitate an illegal transplant, such as providing a patient with a summary of the medical file or a letter for the surgeon that is going to perform the transplant. Nor are physicians obliged to do additional tests to facilitate transplantation. On the contrary, it seems appropriate for physicians to remind patients at this phase of the interaction of the continuity issues—such as a lack of access to records and medical information located at destination clinics—that may create clinical challenges for the patient.^{11,24}

In some jurisdictions, physicians may also have a professional obligation to report colleagues who are facilitating illegal transplantations to the appropriate regulatory authority, as required by professional regulatory bodies (¹⁹ article 48). This practice will help to reinforce professional practice norms that will clarify physician duties and, perhaps, reduce patient interest in accessing illegal organs, but more work is likely needed on the impact of physician advice in this context.²⁵

POSTTRANSPLANT STAGE

There seems to be a broad consensus that when a patient returns, physicians continue to owe a duty of care to their patients. This is particularly so in the context of emergent care. For example, returning patients may require a range of tests and screens, such as for pathogens.²⁶ In nonemergent situations, individual physicians may elect to defer care to another physician, so long as that referral does not prejudice the health of the patient. Having accepted professional responsibility for a patient, the physician must continue to provide services until they are no longer required or wanted, or until arrangements have been made for another suitable physician to assume care of the patient. Punishing returning patients seems an inappropriate policy lever as unequal treatment—including

unequal compensation—creates justice issues, and it seems unlikely to be effective at deterring trafficking practices.

More controversial is whether a physician can disclose to a third party, such as some specified authority, that a patient has purchased and returned with an illegally purchased/procured organ. Collecting data about trafficking and reporting trafficking is a common recommendation^{7,27-29} because it is hoped that would both slow the practice of organ trafficking and provide valuable information that would inform policy. Such disclosure might support the police and judiciary in investigating, disrupting, and prosecuting organ trafficking networks. Information might include the names of hospitals, clinics, cities, and/or hospital staff that are involved in illegal transplant activities.⁷

However, in many jurisdictions, reporting a patient involved in trafficking—or even the existence of a trafficking network—would require a change in the law (ie, new legislation, an amendment to an existing law, or significant case law). This can be a complicated process. In some jurisdictions, it would require the coordination of numerous pieces of legislation (eg, in Canada, it would require each province to take action). Nevertheless, given the potential benefits of a reporting system, it seems appropriate to urge policymakers to explore the possible benefits of a framework that would allow the reporting of basic information. Ideally, this could be done in a manner that does not disclose the identity of the patient.⁷ A system that allows for a clear accounting of the magnitude of the transplantation problem will both assist our understanding of the phenomenon and help to generate the political will necessary to generate policy change.

To justify the development of a legal exception to physician obligations, evidence will be required to support the contention that the exception is needed and can achieve the desired result. As noted in other domains—such as in the area of mandatory reporting of gunshot wounds³⁰—without solid evidence, it may be difficult to justify the required change in the law, particularly given the strength of the norm of confidentiality, the fact that existing law often errs on the side of protecting confidentiality,³¹ and the limited breadth of the existing exceptions (eg, in many jurisdictions, they are limited to situations where there is an identifiable individual who may be in imminent harm.¹⁷

CONCLUSIONS

Physicians are well placed to play a role in the mitigation of the illegal organ trade, including trafficking in human beings for the purpose of organ removal. They have unique access to patient information and are in a position to provide patients with critical information about the nature of the illegal trade. The legal and ethical obligations physicians owe to their patients create challenges that complicate this role and their potential influence. Also, of course, physicians are subject to all the relevant laws in the jurisdictions where they practice. Still, we feel several definitive statements can be made about how physicians should proceed.

- As part of the disclosure process, physicians should provide patients with a frank assessment of the relevant risks and social harms associated with the illegal organ trade and an honest account of the physician's own moral objections (in some countries, they may be ethically required to make this latter disclosure).

- If requested to do so physicians must—as per the law in many jurisdictions—provide patients with copies of their medical records, but they are under no obligation to facilitate the process by, for instance, providing referral letters.
- Legal and ethical obligations require that physicians must treat returning patients.
- In many jurisdictions, physicians have an obligation to report colleagues involved in the illegal trade to an appropriate regulatory authority.
- Existing legal and ethical obligations likely prohibit physicians from reporting patients who have received an illegal organ. This latter conclusion highlights an area that may require legal reform. It has been noted that real benefits may accrue from the collection of more information about the illegal transactions. As such, policymakers should consider the background research necessary for—and possible benefits and risks associated with—a change in existing norms.

Although the focus of this article is on the responsibilities of physicians to patients seeking illegal organs, there are, of course, many related issues that warrant further consideration, including the nature of the duties and responsibilities of physicians who deal with the victims of the organ trade. In addition, we encourage jurisdictions throughout the world to continue to support research into the nature and scope of the organ trafficking phenomenon. Such work is essential, as it will help to inform the development of needed regulatory frameworks. Finally, health professional bodies—such as the relevant regulatory entities for physicians and nurses—should provide guidance to their members on how best to proceed when a patient is involved with organ trafficking.⁹

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