



6. Must a physician inform his patients of his state of health?

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Background

The affair of Dr Sergei Pontos is still fresh in the public memory. Dr Pontos, an anesthesiology resident, was infected with the Hepatitis C virus during the period of his employment in the hospital, and, according to the Statement of Claim filed against him, was addicted to narcotic drugs. He used to inject himself with these drugs during his work, while making use of the same syringe for himself and his patients, and thus infected about 30 patients with his illness.

Although this case is extremely unusual and does not reflect the reality customary in medicine in Israel, the affair, like that of the heart surgeon suffering from AIDS, aroused intense public debate. The questions that arose are whether a hospital is entitled to employ a physician, especially in operating theaters, when it is known that he is suffering from an infectious disease, and whether patients should be informed of the physician's illness.

The Patient's Rights Law states that medical treatment shall not be given to a patient unless he has provided his informed consent, after being informed of the risks and benefits in the proposed treatment. Some people hold that the state of health of the surgeon must be included in this information, in order to permit the patient to decide whether to agree that a specific physician, and only that physician, shall treat him.

Others who support this approach feel that even if a sick physician did not infect the patient, the later discovery that the physician suffered from an infectious disease, and the patient's subsequent need to undergo periodical medical tests to check his state of health, are liable to cause emotional stress and physical harm. These can and should be avoided in advance by full disclosure. The proponents of transparency think that only this approach will maintain relations of trust between the physicians and his or her patients. At the other end lies the sick physician's right to privacy, self-respect and freedom of occupation, just like every other patient.

The Physicians Ordinance [new version] 5736-1976 states that "If the manager (the Director-General of the Ministry of Health – A.R.) saw that a certified physician is suffering from a dangerous disease (that endangers the public – A.R.) he shall be entitled to demand that he appear before a medical board for examination". If the specialists in the said board were convinced that the medical condition of the physician does not constitute a risk to his patients, that physician is entitled to medical confidentiality like every other person, and he should not be obligated to disclose the state of his health to his patients.

The imposition of such a sweeping obligation would constitute disproportional damage to



the sick physician. If the competent authorities ruled that a physician is entitled to practice medicine without restriction, then details of the medical condition of the physician are not presumed to be "medical information" required for the patient by virtue of the Patient's Rights Law in order to make a decision.

The knowledge that the state of health of the sick physician will be kept as confidential information will encourage sick physicians to report the state of their health on their own initiative and of their own free will. It will also permit them to receive early and effective medical treatment for their illness. Only in this way will the broad interest of public health be best served.

Position paper

- A physician suffering from an infectious disease endangering his patients must avoid giving medical treatment or taking medical responsibility for their health.
- A physician suffering from an infectious disease that does not endanger his patients is not obligated to notify them of the state of his health.
- The decision regarding the likelihood that the infectious disease of a specific physician will harm his patients shall be made in accordance with the professional criteria customary in Israel and abroad.
- In this position, a balance is maintained between the public interest to receive safe medical treatment and the right of the physician to privacy, self-respect, and freedom of occupation.