

## VIEWPOINT

# Can Physicians Work in US Immigration Detention Facilities While Upholding Their Hippocratic Oath?

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**The modern successor** to the Hippocratic oath, called the Declaration of Geneva, was updated and approved by the World Medical Association in 2017. The pledge states that "The health and well-being of my patient will be my first consideration" and "I will not use my medical knowledge to violate human rights and civil liberties, even under threat."<sup>1</sup> Can a physician work in US immigration detention facilities while upholding this pledge?

There is a humanitarian emergency at the US-Mexico border where migrants, including families, adults, or unaccompanied children, are detained and processed by the Department of Homeland Security's (DHS) Customs and Border Patrol and are held in overcrowded and unsanitary conditions with insufficient medical care.<sup>2</sup> Children (persons <18 years), without their parents or guardians, are often being detained in these detention facilities beyond the 72 hours allowed under federal law.<sup>2</sup> Adults and children with a parent or legal guardian are then transferred from Customs and Border Patrol facilities to DHS' Immigration and Customs Enforcement facilities, which are also overcrowded and where existing standards for conditions of confinement are

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often not met. Unaccompanied minors are transferred from Customs and Border Patrol detention facilities to Health and Human Services (HHS) facilities run by the Office of Refugee Resettlement (ORR). The majority of these unaccompanied children are then released to the care of community sponsors, while others stay, sometimes for months.<sup>3</sup>

Children should not be detained for immigration reasons at all, according to numerous professional associations, including the American Academy of Pediatrics.<sup>3</sup> Detention of children has been associated with increased physical and psychological illness, including post-traumatic stress disorder, as well as developmental delay and subsequent problems in school.<sup>4,5</sup>

Given the psychological and physical harm to children who are detained, the United Nations Committee on the Rights of the Child stated that the detention of

a child "cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof," and should in any event only be used "...as a measure of last resort and for the shortest appropriate period of time."<sup>6</sup> The United States is the only country not to have ratified the convention on the Rights of the Child, but the international standard is so widely recognized that it should still apply. Children held in immigration detention should be released into settings where they are safe, protected, and can thrive.

Physicians and other health professionals, in keeping with their professional ethics obligation to ensure that the well-being of the patient is their first concern, have a responsibility to provide the highest standard of care to detained children, as well as to all other detained persons; this obligation is underscored while children remain in detention. Such care includes always acting in the best interest of the patient and advocating for improved conditions that will prevent and not exacerbate physical and psychological illness among detainees.

However, physicians and other health professionals are often put into situations in which they cannot fulfill their obligations to their patients because of competing obligations imposed on them by detaining authorities; this is often referred to as the problem of dual loyalty.<sup>7</sup> Given the reports of inhumane, overcrowded, and unsanitary conditions, including insufficient water and toilets, lack of clean clothing and bedding, high exposure to psychological stress, and poor medical care in many of the DHS processing and detention facilities, how can and should needed medical care for detainees be structured, especially given the dual loyalty challenges that emerge if physicians are employed by the agency in charge of detaining migrants?

First and foremost, health care professionals should insist on and adhere to clinical independence to ensure they are able to provide the highest standards of care that are in the best interests of the patient. This independence also demands that physicians and other health care professionals are not subject to retribution for reporting, both in medical charts and openly and transparently to authorities, including legislative oversight bodies, about their evaluations of conditions of detention that impede their patients' health and the availability of quality medical care. Currently, all DHS employees, consultants, and subcontractors are required to sign nondisclosure agreements that are quite strict and clearly state that if violated, the person "...could be subject to

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administrative, disciplinary, civil or criminal action..."<sup>8</sup> Such nondisclosure agreements could conflict with physicians' primary duties to the health of their patients.

One way of ensuring such independence is to utilize clinicians who are neither employed by the government nor by a government-contracted company whose employees lack complete clinical independence and are required to sign a nondisclosure agreement. Contracts to provide medical care for migrants detained in US government facilities should be entered into with independent medical organizations that clearly affirm the ability of health professionals to uphold principles of medical ethics and clinical independence. These might be pediatric or adult medical professional organizations, professional nursing associations, or perhaps medical organizations and non-governmental organizations that are transparent and independent.

Second, there needs to be an independent health oversight body that monitors all aspects of preventive and curative health services, outcomes, and standards in DHS and ORR/HSS immigration detention facilities, assesses health care practitioners' ability to uphold their primary professional obligations, and issues timely recommendations. While DHS has an Office of Civil Rights and Civil Liberties and an Office of the Inspector General, reports of the former are not made public and reports of the latter are not completed in real time. The proposed independent oversight body should be completely insulated from government interference and be granted full access to all DHS and ORR/HSS detention facilities, their personnel, and patient medical records at any time without

prior notification. Their findings should be made public subject only to considerations of patient confidentiality.

Third, DHS and ORR/HHS should be required to report on a regular basis how they are meeting their own and international standards for each facility for which they are responsible. While Customs and Border Patrol, Immigration and Customs Enforcement, and ORR standards exist, they should be assessed independently to ensure they are sufficient and meet international standards. Furthermore, their responses to the independent health oversight organization should also be made public.

In 2014, António Guterres, then the United Nations High Commissioner for Refugees and now the United Nations Secretary General, said "Children who arrive in another country in search of international protection are extremely vulnerable and have specific needs. We should treat them first and foremost as children, not as illegal aliens." He noted, too, that even when detained with families, "this detention has a devastating effect on the physical, emotional and psychological development of these children."<sup>9</sup> His statement is consistent with medical ethics that has been strikingly consistent from Hippocrates to modern-day guidance. Whatever the future of US immigration policy, decent and humane treatment of children, as well as all other detainees, and preservation of the independence of physicians and other health professionals to meet patients' medical and psychological needs are essential. Now is not a time to change the commitments, reputation, and integrity of physicians and the medical profession.

#### ARTICLE INFORMATION

**Published Online:** August 30, 2019.  
doi:10.1001/jama.2019.12567

**Conflict of Interest Disclosures:** None reported.

**Additional Contributions:** The authors wish to acknowledge Mija Ververs, Homer Venters, and Scott Allen for their expert insight that enriched this Viewpoint. None of these individuals received compensation in association with their contributions to this article.

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