Perspectives

A Reply to Spital's Concerns

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In his response to our treatment of the medical excuse, Spital claims that we offer a flawed analysis of the practice of offering excuses to potential living organ donors.[1] Spital's criticisms help sharpen our position and more clearly lay out the issues. In what follows, we address each of his concerns and replies and clarify our earlier analysis.

First, Spital correctly notes that we provided no reference for our claim that some transplant centers construct medical excuses and provide them directly to donor candidates without the candidate's knowledge.[2] We made the statement based on the personal experiences of several transplant physicians at different transplant centers; we found the claims to be credible and chose not to cite the sources in order to protect confidentiality.

Second, Spital disputes on conceptual grounds our analogy to the practice of concealing a fatal prognosis. Spital claims that we imply that the use of the medical excuse engenders false hope.[3] We imply no such thing. Rather, the analogy highlights the fact that even the best intentioned physicians can make incorrect or inappropriate assumptions about what constitutes the best interests of their patients. Because no empirical evidence supports or contradicts claims about whether using the medical excuse fosters the short- or long-term benefits or harms commonly attributed to it—particularly the protection or "shielding" of patients—we used the analogy in part to draw attention to the fact that common beliefs about the medical excuse may well be false and to highlight the need for empirical research in this area.

Third, Spital claims that there is no evidence that widespread dissemination of information about the use of deception via the medical excuse would damage trust in the medical profession.[4] Spital postulates that the public would understand and forgive physicians' use of the medical excuse if they understood its true purpose.[5] In support, Spital relies on two dubious premises: (1) that the donor and recipient evaluation and care teams maintain sufficient separation to ensure confidentiality and (2) that there is a substantive distinction between deception and lying. In the experience of one of the authors (J.F.) who has worked at and with a number of transplant centers, this separation is an ideal not often achieved in practice, particularly when the donor and recipient candidates are familial relations. Spital cites Beauchamp and Childress's distinction between deception and lying in support of his own claim that they are distinct morally.[6] However, nei-

The authors acknowledge Matthew Devitt for his contributions to this reply.

Cambridge Quarterly of Healthcare Ethics (2008), **17**, 128–130. Printed in the USA.
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DOI: 10.1017/S0963180108080134

https://doi.org/10.1017/S0963180108080134 Published online by Cambridge University Press

ther he nor his source provide justification for this distinction. We find it difficult to imagine the grounds on which the distinction would rest, given that both deception and lying share the essential quality of representing as true what is in fact false. Spital argues that donor candidates, not physicians, engage in the lie of the excuse; the donor teams merely "help the candidate to deceive."[7] Lying to patients is an abuse of their trust, as Jackson has claimed; "helping" one patient to lie to another amounts to assisting in that abuse.[8] Public trust in the profession might well suffer as a result of such a practice becoming common knowledge.

Fourth, Spital objects to the analogy to working with teenagers with an unintended pregnancy.[9] We did not suggest that the cases are the same. Rather, we argued that there may be something to be learned from the analogy because of contextual similarities. We agree with Spital that we simply speculated about the benefits of facilitating difficult discussions within families. Again, this suggests the need for research into this area.

Fifth, Spital rejects our view that medical excuses serve to reinforce presumed obligations and thus justify eliminating medical excuses.[10] We do not make such a sweeping claim. Rather, we sought to sensitize the reader to the idea that routine use of medical excuses may exacerbate, rather than mitigate, the extent to which donor candidates may feel a duty to donate; that is, medical excuses may have an effect opposite the one intended.

Sixth, Spital asserts that the donor candidate and not the transplant team should decide whether the risk of nonmedical harm is worth the benefit of bowing out gracefully.[11] In the context of research—including nonmedical research—regulatory safeguards limit an individual's ability to decide for him- or herself the amount of risk he or she wants to assume, even where the potential subject thinks he or she will benefit from assuming those risks.[12]

Also, Spital claims puzzlement by our recommendation that transplant teams may say upfront that they reserve the right to refuse any candidate without a detailed explanation as to why. In contrast, he asserts that "rejected candidates are entitled to an honest and complete explanation for refusal."[13] We are puzzled that Spital does not extend this same right to an honest explanation for refusal to recipient candidates. Moreover, we contend that telling people upfront that they may not receive a detailed explanation as to why they may not donate is more respectful of them than is assisting and being complicit in their deception.

Finally, Spital claims that excuses foisted upon donor candidates without their request or knowledge are unacceptable because physicians "should be completely honest with all their patients, including donor candidates."[14] We agree. We believe that this obligation to be honest extends to potential recipients. The use of the medical excuse undermines this injunction. We have work to do to establish the conditions under which we might justify using medical excuses or other deceptive practices.

Notes

1. Spital A. Providing a Medical Excuse to Organ Donor Candidates Who Feel Trapped: Concerns and Replies. *Cambridge Quarterly of Healthcare Ethics*, this issue, 124–127; Simmerling M, Frader J, Franklin J, Angelos P. When duties collide: Beneficence and veracity in the evaluation of living organ donors. *Current Opinion in Organ Transplantation* 2007; 12:188–92.
2. See note 1, Spital 2007.
3. See note 1, Spital 2007.
4. See note 1, Spital 2007.

https://doi.org/10.1017/S0963180108080134 Published online by Cambridge University Press

5. See note 1, Spital 2007.
6. See note 1, Spital 2007.
7. See note 1, Spital 2007.
8. Jackson J. On the morality of deception—Does method matter? A reply to David Bakhurst. *Journal of Medical Ethics* 1993: 19(3):183–7.
9. See note 1, Spital 2007.
10. See note 1, Spital 2007.
11. See note 1, Spital 2007.
12. U.S. Department of Health and Human Services. Code of Federal Regulations, Title 45, Part 46. Protection of Human Subjects, Revised November 13, 2001. Available from: URL: http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.htm, accessed Jun 1, 2007.
13. See note 1, Spital 2007.
14. See note 1, Spital 2007.

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