

A colleague wants to call ICE on a patient. What should you do?

JAN 4, 2019

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It is not uncommon for physicians to encounter patients who appear to have migrated to the U.S. illegally. But not all physicians are certain about their legal or ethical obligations in these situations. Learn about five ethical and legal considerations to keep in mind.

This guidance is summarized from an article published in the *AMA Journal of Ethics*® (@JournalofEthics) by Tyler Tate, MD, of the University of Washington (UW) School of Medicine, and Jeff Sconyers of UW's School of Law. It is based on the hypothetical case of a clinical staff member's impulse to call federal authorities—such as U.S. Immigrations and Customs Enforcement, or ICE—on a patient suspected of being undocumented.

Reporting is not required. “There is a common misconception among nonlawyers that there is a general duty to report illegal activity. There isn't,” the authors wrote. “In the same way that the First Amendment to the U.S. Constitution protects the right of free speech, it also protects the right not to speak.”

Treatment obligations depend on the circumstances. Although you have no obligation to report a patient who might be living in the U.S. illegally, you similarly have no legal obligation to take her on as a patient, an exception being if you are a physician in the emergency department of a hospital that participates in Medicare or Medicaid. The authors did argue that physicians have a moral obligation to care for patients living in the U.S. illegally that is fundamental to the practice of medicine.

A duty to treat would arise if you have a pre-existing relationship with the patient or if, given the circumstances, the patient reasonably relies on your help, such as when asking directly for medical advice.

What physicians can't legally do: discriminate. Physicians may not refuse to care for a patient on the basis of the patient's membership in a legally protected category, such as race, religion, national

origin, gender or gender identity, veteran status or disability. States' laws vary on which categories are listed.

HIPAA applies. All information related to a patient's health—which can include immigration status—that any patient provides is protected health information subject to the Privacy Rule under the Health Insurance Portability and Accountability Act (HIPAA), except in very limited circumstances.

There is no general exception for patients who might be involved in criminal activity—only one for criminal conduct that occurs on the premises of a health care facility. Using a false name, for example, is not a crime unless it is done to obtain benefits to which the patient is not entitled. All clinical staff are bound by HIPAA requirements and should be ready to execute their obligations to protect patients' privacy.

Make sure any bills you submit are accurate. Just as a patient has a duty to ensure the information she uses to obtain medical benefits is accurate, so too should the clinic have a process in place to verify the information it provides to insurers for billing is correct.

Private insurers may drop or otherwise punish practices that bill them incorrectly, and state and federal agencies may impose severe penalties for bills submitted with false, misleading or otherwise inaccurate information.