Elliott Crigger, PhD, on the ethics of treating a president during the pandemic

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In today’s COVID-19 update, a discussion about the ethics of treating the president during a pandemic and questions it poses for physicians.

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Speakers

- Elliott Crigger, PhD, director, ethics policy, AMA

Transcript

Unger: Hello, this is the American Medical Association's COVID-19 Update. Today we’re talking about the ethics of treating the president during a pandemic, and questions that it poses for physicians. I'm joined today by Elliot Crigger, the AMA's director of ethics policy, and secretary to the Council on Ethical and Judicial Affairs. In Chicago. I'm Todd Unger, AMA's chief experience officer in Chicago.

Elliott, a paper of yours called “The Ethics of Treating the President” was posted to the Hastings Center Bioethics Forum last week. This topic is obviously very relevant today, considering President Trump's recent treatment for COVID. Can you first start by talking about some of the critical ethical questions that are involved?

Crigger: Sure, Todd. I think the things people think of first are probably privacy. What right do people have to know about anyone’s medical treatment, let alone the president’s. [W]e also think about the
role of the president's physician. He's on that boundary between public and private in a certain sense. And also, in the instant case, although I think in any case, what kinds of treatments were proposed or offered to the patient president and were they sort of standard therapies or did we move into novel territory? And in the case of President Trump, we appeared to move into novel territory if what we heard was accurate.

**Unger:** Yeah, so these are obviously really interesting and not hypothetical questions and issues. You started by talking about privacy. So, let's talk first about the issue of confidentiality. When do physicians have a right to disclose a patient's health information?

**Crigger:** Generally speaking, physicians, either have permission to disclose, societal permission to disclose, or a requirement to disclose when disclosing information is going to protect the public interest, so public safety issues, mandatory reporting of infectious disease, mandatory reporting of knife wounds, or gunshot wounds. In some states, certainly mandatory reporting when an individual has a medical condition that can impair his or her ability to drive safely. All of these are, when the effort ... excuse me, when the effort is intended to protect public safety.

**Unger:** That's interesting, because we think of privacy as being so strong around health issues, but these are mandatory reporting requirements about the safety of the public. Obviously, it applies to the president. So, what are the rules of confidentiality that apply to the president of the United States?

**Crigger:** Well, we don't have any separate rules as such for the president, but I think we can make the case that because the president is not only a public figure, but has enormous authority and responsibility to the people of the United States as a whole, there is a certain sense in which the president should be willing to disclose and the public has a right to expect disclosure of information about a health condition, at least when that health condition may impair the president's ability to fulfill his responsibilities, his or her responsibilities. So, if there's a chance that the president will not be able to make decisions, for example is going under anesthesia, that's something that is probably in the public interest to know. And it's certainly in the interest of the 25th Amendment, for example, to execute a voluntary transfer of power for the duration of that incapacity. So, there are good reasons to think that some level of disclosure is required. And I think the crux of the problem is just what does that mean?

**Unger:** Yeah. So, let's talk about that. There is actually a term that you talk about, about how much information needs to be disclosed. Will you talk about that?

**Crigger:** Sure. I think the general rule of thumb for any disclosure of personal health information is the minimum necessary. But what counts as the minimum necessary for the purpose? In this case, in the case of treating a president, I think how we answer that question is going to be based on the severity of the president's condition, the likelihood of a quick recovery or a prolonged illness, all those kinds of factors that are unique to the individual. And then once we have sort of a sense of that, well, what is it really in the public interest to know? Do we need to know health status, up or down? Yes,
probably that's perfectly reasonable to expect that to be disclosed. Do we need to know the details of a treatment plan? That's a rather dicer question. Do I need to know when the patient receives certain kinds of medications? I would argue that that depends in part on the kind of medication, the kind of intervention that's being performed. It's standard of care, everybody going in we'd get it, that's one thing. If it's a novel therapy, that may be something else.

**Unger:** It's interesting because I would say, on the public side of this, some of those rules, per se, were not exactly clear. And I think that's what's part of the confusion that we saw about the president's prognosis, how severe this was and what his treatment plan was looking like. From an ethical perspective, was this appropriate and how did his physicians do in what was admittedly a very difficult role?

**Crigger:** I think it probably was a very difficult role. We really don't know how that decision-making was handled. That's a black box we can't see into, and arguably we shouldn't be able to see into too much of it. But I think, especially in circumstances where there is a public health crisis ongoing or some other form of crises, if it had been a national security crisis, the same kind of question would have applied, right? It's probably ethically more prudent to disclose rather more than you otherwise would have because there is an issue of public trust that's very important. And generally, we protect confidentiality to protect the patient's trust in the physician. In this case, I think because of the unique nature of the president's role, the public has a greater interest in knowing.

And I think that's a very tough call for the president's physician because he is, as I think I mentioned before, he's sitting on this boundary between public and private. He has a patient in front of him to whom he owes all the respect and rights that any other patient will receive. And yet at the same time, he's in something of the role of a public figure. He's mediating between this patient and the rest of the world, if you will.

**Unger:** And another kind of layer on top of that is that many White House doctors are active duty military officers.

**Crigger:** Right.

**Unger:** So, in your paper, you talk about how military physicians in particular are used to this kind of balancing act. Can you talk about that?

**Crigger:** Well, they're certainly routinely in situations of that balancing act. How used to it any one individual is, I wouldn't want to say. But basically, they do have a set of divided responsibilities. They have a responsibility to the patient in front of them, but they also have a responsibility to the mission. And in a battlefield situation, for example, or most other situations, the physician's duty is to benefit the patient to return that individual to active duty. It's not solely for their patient. It's to bring that patient back to his or her unit and ability to function.
When the patient is the president, a military physician also has the added challenge of treating his commander-in-chief, his or her commander-in-chief, and to not follow the patient's preferences is to disobey a direct order from your commander-in-chief. That's probably not a wise career move, depending on the decision. But at the same time, to not disclose or to not adhere to the patient's wishes violates your responsibility as a physician, your obligation to recognize the patient as a decision maker, to respect that, and to uphold your fiduciary duty to the patient. So physicians in the White House are in a very uncomfortable position, probably most of the time.

**Unger:** So, we talked about confidentiality up to this point. Let's talk now more about treatments. Obviously, discussion about the kinds of treatments the president was able to have access to. In ethical terms, this kind of innovation or providing access to innovative treatment options, is that consistent with the physician's obligation? What kind of guidance would ethics have in this area?

**Crigger:** Right. Well, I think ethics has a number of different things to say. I mean, the presumption is always that the first recommendation will be whatever standard of care is, what any patient would get going in. In novel situations where there is no standard of care for the patient's condition, or for whatever reason, standard therapy is not appropriate for that patient, specifics of the situation, the physician can look to more innovative actions. And AMA's code actually does speak to innovation in medicine, and the kinds of considerations that go into using an approved medication, for example, off-label, for an indication other than what the FDA approved it for, or even using a therapy that has not yet been validated in a clinical trial, that is still under investigation.

There are provisions for doing that. And it appears, at least based on the public reports we had, we can't say what actually went down, obviously, but based on the news reporting, it appears that in this case, the president was treated with a therapy that is still under investigation, has not received FDA approval. So, it's not an off-license use or an off-label use. It is a compassionate use, I believe was the term one of the commentators used, of a therapy that's in clinical trials right now. So we don't have conclusive evidence of safety or efficacy yet. Basically, we don't know yet whether this works. We think it might, but we don't have the data to show. That seems to be challenging when the patient being treated has decision-making authority of the sort that the President of the United States has. And it also, I think, raises real questions about equity. Is this VIP care? Is this C-suite care that the rest of us would never have access to?

**Unger:** So, let's push on that a little further. In this case, are physicians required to provide access to experimental treatments when a patient requests them?

**Crigger:** No, they are not. Physicians are never required simply to accede to a patient's request for for them. Physicians need to go along with the patient to provide access or support access. A physician would need to believe that there is some likelihood of benefit that outweighs the likely or known risks, that it would be appropriate clinically for this patient to receive this care, that it's likely to achieve the goals of treatment that they had agreed on together, and then to find a route to get to
that. The best route is to enter the patient in the clinical trial, right?

The challenge with that is, the patient might not receive the active agent, might be in the placebo arm. And in a properly randomized trial, neither the physician referring the patient, nor the investigator will know which that is until well down the line. The other is to, if the patient meets conditions for FDA's Expanded Access program, is to help the patient ... or apply on the patient's behalf for Expanded Access to a therapy that is currently in clinical trials, but for which the patient is unable to participate in the trial. So, the patient doesn't meet the inclusion criteria for a trial, or the patient is unable to access a trial for other reasons, geographic location, whatever. So it's a sort of..."last resort" is a bit too strong, but it's in that pathway, right? This is the last thing we can do for you. But even in the case of a physician supporting an application to the FDA, the FDA approving the application, it's ultimately up to the manufacturer of the drug to provide that.

**Unger:** You mentioned equity, obviously, there are concerns that certain patients like a president per se, with status or means would have access to better treatment than say, I'd be able to get.

**Crigger:** Exactly.

**Unger:** So how do you consider that?

**Crigger:** I think that that's one thing that should be in the part of every decision. Every physician has a responsibility to be a steward of public resources, and to keep in mind the effect that this treatment decision may have on others. I think whether we permit that kind of access again, the president is a special case. We want to make sure that this individual can fulfill his or her responsibilities. If a physician truly believes that this novel therapy or this off-label therapy is the best course to restore function or preserve function and return the patient to his or her responsibilities as quickly as possible, there's an argument to be made that that's acceptable. But it can't be just that we routinely offer the C-suite better care. That drug has to become available to the rest of the population.

And I think one of the concerns about providing this off-label, or not so much off-label, but this compassionate use, is it sends a message that participating in clinical trials isn't any big deal, we don't have a responsibility to do it, which means that the trial is going to take longer to complete, to enroll subjects, which means the rest of us are not going to have access to that medication, assuming it proves effective and safe and all of that. It's going to delay the whole process down the road, quite aside from whatever issues of cost and availability, whether it's going to be covered by insurance, all of those other logistic or administrative, or actually structural issues in this country. So, it's a tough call. You can see it really, I think in this case, is going to depend on the particulars of the case.

**Unger:** Well, Elliot, thank you so much for being here. It's so interesting to see these kinds of ethical issues play out in real time during this extraordinary period of the pandemic. For those of you who are watching today, you can read Elliot's full paper on this topic at the Hasting Centers website, thehastingscenter.org. We'll be back soon with another COVID-19 update for resources on COVID-
19, including ethics issues. Visit the AMA’s COVID resource center, ama-assn.org/covid-19. Thanks for joining us, and please take care.

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