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Medical Crime: Occupational Crime At Its Worst

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Abstract

Crime is a topic that is often discussed among law-makers as well as members of the general public. That being said, there is an overwhelming focus on street crimes (e.g., theft, drug offences). Those crimes which occur in professional settings are not given as much attention. In this paper, one particular type of occupational crime is discussed. Medical crime is a type of occupational crime which includes a wide range of illegal activities committed within the medical profession. Some of these include fee-splitting, taking or offering kickbacks, price-fixing, fraudulent billing, and performing unnecessary operations that can cause serious harm. Minimal oversight and unsuitable punishment enable medical professionals to take advantage of their positions. As a result, medical crime is perpetuated. Due to the severity of the harm caused by these crimes and the lack of oversight in the medical profession, medical crime is arguably the most harmful type of occupational crime.

The term “occupational crime” refers to crimes that are committed within the context of a legitimate occupation, typically with the objective of financial gain. Occupational crimes include retail, legal, academic, religious, and medical crime (Friedrichs 2010: 97). The focus of this essay is on medical crime, which includes a wide range of illegal activities committed within the medical profession. Some common medical crimes are fee-splitting, taking or offering kickbacks, price-fixing, fraudulent billing, and performing unnecessary operations (Friedrichs 2010: 102-103). This essay considers how medical professionals undermine the integrity of the medical profession by taking advantage of their positions and violating the trust of the public, the serious harm caused by unnecessary surgeries, and how medical crime is perpetuated due to minimal oversight and unsuitable punishment. These three points are discussed in order to demonstrate that medical crime is the most harmful type of occupational crime.

The College of Physicians and Surgeons of Ontario (n.d.) states that “medicine is about compassion, service, altruism, and trustworthiness.” Although this sentiment may be shared in principle, the actions of some medical professionals suggest that it might fall by the wayside in practice. Medical professionals enjoy a relatively high level of respect from the general public and are not typically associated with the term “criminal.” Their high status and shield from the criminal label allow them to engage in criminal activities without being suspected and with only a slim chance of being caught. When doctors do take advantage of their position of power and violate public trust for personal gain, it undermines the integrity of the medical profession as a whole.

Healthcare is a business, and doctors might be primarily motivated by profit. When this is the case, they may use their respectable status to engage in fraudulent activities. Fraud involves an intentional deception that an individual makes, knowing that doing so



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could result in some benefit (i.e., personal financial gain). Fraud by physicians often occurs within the context of regular occupational activities, so it is not easily discovered (Friedrichs 2010: 103). Types of fraud committed by medical professionals include billing for services not rendered, up-coding, misrepresenting services, and providing unnecessary treatment. The primary victims of medical fraud are insurers, employers, and the public. Fraud results in less money available for the deserving, the potential of physical harm, and reduced coverage (Friedrichs 2010: 104). Furthermore, Price and Norris (2009) note that “when medical providers bill for services never rendered, they create a false medical history for patients that may later cause them difficulty in obtaining disability or life insurance policies” (286). It is clear that fraud is a major problem in the medical profession, as reflected in the fact that “Canadian doctors were forced to pay back nearly \$25 million in improper medical insurance billings from 2010 to 2013” (The Associated Press 2015).

To demonstrate the severity of medical fraud, I use the example of Dr. Farid Fata. Here, Dr. Farid Fata, a cancer doctor, prescribed \$35 million worth of unnecessary chemotherapy to more than 500 patients, some of which did not even have cancer (Sterbenz 2015). This resulted in insurance companies paying more than \$17 million (The Associated Press 2015), not to mention the physical and psychological pain inflicted on the victims and their families. Fata admitted that he was being greedy and that he intentionally misused his power for personal gain. However, Dr. Fata is not the only doctor to engage in these types of activities – he just happens to be one who was caught. When situations like this come to light, people might realize that doctors do not all have good intentions, which may cause them to be more skeptical of medical professionals

in general. Therefore, when public trust is violated by one doctor, the entire medical profession suffers.

When considering doctors who are more concerned with profit than the well-being of their patients, one can turn to power theories of crime in order to suggest an explanation for their actions. Power theories of crime argue that criminality is more pronounced among the powerful and privileged because they aspire to material success (Friedrichs 2010: 225). Medical professionals occupy powerful positions in society and often enjoy a large salary. Those who are financially motivated might take advantage of their respectable positions in order to exploit unsuspecting patients. In an effort to maximize their profits, they may resort to criminal activity knowing that the chance of being caught is low. This explains why fraud is not an uncommon occurrence among medical professionals. Therefore, the medical profession is often regarded as trustworthy and altruistic, but individuals who take advantage of their power and violate public trust for their own benefit undermine its integrity. The financial, physical, and psychological harm caused by these criminal actions highlight the severity of medical crime and demonstrate that it is perhaps the most harmful type of occupational crime.

Medical crime becomes violent when doctors perform unnecessary surgeries. According to Leape (1989), “unwarranted surgery represents a problem of staggering magnitude in terms of needless pain, suffering, and death, as well as a substantial waste of human and financial resources” (351). Considering the time, effort, cost, and risks involved with any surgery, one might not suspect that surgery would be performed unless absolutely necessary. However, unnecessary surgeries account for 15-20% of operations performed annually in the United



States (Friedrichs 2010: 103). The most common forms of unnecessary surgery are the removal of tonsils, hemorrhoids, appendixes and uteruses, heart-related surgery, and caesarean-sections (Friedrichs 2010: 103). A look at the latter types of surgery on this list demonstrate that doctors are willing to put their patient's lives at risk when they perceive some personal benefit for doing so. These are complicated surgeries with many risks that involve an extensive recovery process. Performing unnecessary surgeries can result in direct costs to the victims such as paralysis, blindness, or other forms of permanent injury (Friedrichs 2010: 103). For this reason, the performance of unnecessary surgery raises many ethical questions.

Victims of violent medical crimes also suffer psychological costs. Most individuals hold medical professionals to a higher standard of competence and perhaps morality than regular people. When an individual is victimized by a doctor, they might become confused, anxious, and suspicious of all medical professionals. As a result, victims might be less likely to seek medical help in the future because they are scared of being victimized again. Therefore, it is clear that being a victim of violent medical crime can have negative consequences lasting for the rest of one's life.

In order to try and explain why medical professionals perform unnecessary surgeries despite being aware of the potential consequences for patients, rational choice theory can be considered. Rational choice theory suggests that individuals make rational decisions after considering the costs and rewards of a potential action (Friedrichs 2010: 233). A doctor could be aware of the risks involved with a surgery, as well as the chances of getting in trouble if something goes wrong. However, if they think about

the potential benefits and decide that they are greater than the risks, performing the surgery might look like a good option. Friedrichs (2010) points out that unnecessary surgery is promoted by the "fee-for-service" reimbursement system and the absence of effective control mechanisms (103).

Furthermore, medical professionals might be influenced by other doctors. Differential association theory is a learning theory suggesting that criminal behaviour is learned through contact with others with a law violating orientation (Friedrichs 2010: 235). Doctors might be around other medical professionals who they see getting away with medical crimes such as the performance of unnecessary surgeries. If these other doctors are being reinforced for their behaviour by obtaining some benefit without being punished, the observing doctor might decide that he or she too can get away with similar activities. When deciding whether or not to commit the crime, a doctor might engage in neutralization. Most white collar offenders are unlikely to support the behaviours of conventional offenders and they conform to most laws (Friedrichs 2010: 237). They are not typically "bad" people, so they may have to suspend their beliefs about right and wrong in order to perform a surgery that could harm their patient.

One problem that arises with the performance of unnecessary surgeries is that they are not always easy to identify. Most people would trust the decision of a trained medical professional because few people have sufficient knowledge to suggest alternative courses of action. This problem persists in the courtroom, when judges have to decide whether or not the actions of a doctor are criminal. Judges likely do not have extensive medical knowledge and might be unable to determine whether or not an operation was necessary. It would likely be hard for a

judge to come up with alternative courses of action, so they might make their decision based on their perception of the doctor's integrity as opposed to the situation that led to the alleged unnecessary surgery. A judge might rely on a doctor's expertise and rule that he or she was acting with good intentions and is not to blame for the consequences of the surgery. This demonstrates that people trust the decisions of medical professionals when they might be wrong, simply because they do not have the knowledge to question them. If doctors are aware of this, they might use it to their advantage, knowing that no one will question their decisions and that no one will be able to prove that a better decision could have been made. Perhaps if the actions of medical professionals were more closely monitored, the frequency of medical crimes would decrease.

Therefore, medical professionals can be the perpetrators of violent crime in the form of unnecessary surgeries, which can be dangerous and potentially life-threatening to their patients. The physical and psychological costs for the victims are serious and long-lasting. The fact that many people, including judges, accept the decisions of these doctors because there is no one to prove that they were made selfishly is another problem that facilitates the commission of violent medical crime. For these reasons, medical crime may very well be the most harmful type of occupational crime.

Medical crime is perpetuated because there is a lack of oversight in the medical profession and a lack of sufficient punishment for those who do engage in criminal activities. White collar crime in general is less visible than conventional forms of crime and offenders often go undetected. This is also

the case for medical crime, and when offenders are caught, they often get out of paying the price for their actions.

As a result of systemic bias in the criminal justice system, offenders who are members of minority groups, those who are not well-educated, and the poor, often face harsh punishments for their crimes. On the other hand, white collar offenders, who are typically well-educated, upper-middle class, caucasian men, are often met with leniency by the justice system. This relates to medical crime because the majority of doctors in the United States fall into the second category. In fact, of the 18,078 medical school graduates in the United States in 2014, 10,458 were White (Association of American Medical Colleges 2015). As a result of differential opportunity between social groups within society, those who are able to attend medical school often come from well-off families. Therefore, the majority of new doctors are prime examples of individuals who have a greater chance of lenient treatment by the criminal justice system. For this reason, they might be encouraged to engage in medical crime because they know that they are likely to get away with it.

Citing an example used earlier, Dr. Fata, the cancer doctor, only received 45 years in prison for unnecessarily treating and harming over 500 patients – thus showing how those within the medical profession are more likely to receive a lenient sentence when compared to others (The Associated Press 2015). Furthermore, lawyers might argue that when a doctor is given a criminal label, it ruins their reputation. Arguing that a medical professional has suffered enough as a result of the humiliation that comes with being labelled a criminal might evoke sympathy in the courtroom and could lead to a lesser sentence.

The law favours those with power and influence, which explains why medical professionals might be treated more leniently. In one case, “the court held that simple lack of care, error of judgment, or an accident is not proof of negligence on the part of a medical professional” (Pandit & Pandit 2013: 379). It is also a possibility that people, including members of the criminal justice system, do not want to think that medical professionals would engage in criminal activities. These individuals likely all visit a doctor as well, and knowing that they could be a victim of medical crime might create a sense of uneasiness. Pandit and Pandit (2013) said that:

“when a legal notice is received or a consumer case alleging deficiency in service is filed against a doctor, it creates a lot of emotional disturbance as the reputation of medical professionals is built over years through sheer hard work, expertise, and skill acquired by strenuous training and investment over the years” (383).

It might be hard for individuals to accept that their doctor, someone who they trust with their health, could be a criminal. Perhaps for this reason, they try to avoid labelling them as such in order to maintain their own peace of mind.

The fact that doctors are able to use their respectable positions to engage in crime can be related to the routine activities theory. This theory suggests that crime is a consequence of motivated offenders, suitable victims, and the absence of guardians (Friedrichs 2010: 234). As mentioned earlier, medical professionals might be motivated by profit and will engage in illegal activities in order to obtain some benefit. This is relatively easy for them because they enjoy autonomy in their decisions and they often deal with vulnerable patients who do not ask any

questions. The lack of oversight in the medical profession gives these individuals the opportunity to do essentially whatever they want. Therefore, the motivated offenders, suitable victims, and lack of a control mechanism provide the perfect opportunity for a doctor to engage in criminal activities without being caught. Perhaps if more controls were imposed on medical professionals and their actions were more closely monitored, the frequency of medical crimes would decrease.

Therefore, the autonomy granted to medical professionals and the lack of sufficient punishment facilitates the commission of medical crimes and will continue to do so until more is done to regulate the behaviour of doctors and hold them accountable for their actions. The fact that the conditions in the medical profession perpetuate the commission of medical crime given the detrimental physical and economic costs, demonstrates that medical crime is a serious problem and is possibly the most harmful type of occupational crime.

In conclusion, medical crime is a serious form of occupational crime that undermines the integrity of the medical profession, can result in physical and psychological consequences for victims of unnecessary surgery, and is perpetuated by a lack of control over the decisions of medical professionals and a lack of punishment for those who are caught. After considering these aspects of medical crime, it can be concluded that medical crime is the most harmful type of occupational crime.

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