

The Ethics of Caring for Detained People on Hunger Strike

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Hunger strikes by immigrants and asylum seekers are constitutionally protected, nonviolent protests of last resort, occurring with remarkable frequency in U.S. Immigration and Customs Enforcement (ICE) detention facilities (1). Their numbers have increased recently, as detained people protested ICE's lack of adequate pandemic precautions: About 2500 detainees participated in a hunger strike during the first 6 months of the pandemic compared with 1600 during a prior 3-year period (1). Given the vulnerability and lack of agency experienced by people in detention, what are the ethical responsibilities of health care professionals when detainees exercise their right to protest via hunger strikes?

Most ICE detainees are held in facilities owned or operated by private prison corporations, and they are in civil detention not criminal incarceration. But the ethics of treating people on hunger strikes are governed by human rights, which apply regardless of detention setting or legal status (2). Similarly, research in prisons confirms that hunger strikers' demands are often reasonable, such as access to lawyers and adjudication of their cases, but the reasons for a strike are unrelated to ethical medical treatment (3). A recent report by the American Civil Liberties Union and Physicians for Human Rights, on which we are authors, reviewed more than 10 000 pages of government documents on hunger strikes from 2013 through 2017 released under the Freedom of Information Act, as well as testimony from 6 detainees who undertook hunger strikes (4). The report examined more than 1378 cases of hunger strike in ICE detention and revealed that ICE has often responded with brutal policies of involuntary medical interventions, including force-feeding and forced Foley catheterization, as well as solitary confinement, transfers, threats of family separation, and other forms of abuse.

ETHICS OF CARING FOR HUNGER-STRIKING DETAINEES

When a detained person refuses food, their medical team faces an ethical challenge. Not all hunger-striking people will be of sound mind. Some might be experiencing coercion by fellow detainees; some might even secretly prefer to be force-fed. But these challenges are not new, and health professional organizations have well-considered ethical guidance on hunger strikes (Table).

Several points from these ethical standards are especially pertinent to recent cases. First, medical professionals are responsible for assessing a person's decisional capacity, and force-feeding people with decisional capacity is medically unethical and can be illegal (5). Most people who can fight back enough to require a "restraint chair" for force-feeding are not so weakened by malnutrition as to have lost decisional capacity.

Second, health care professionals must never use their skills for the punishment of incarcerated or detained people. For the same reason that health care professionals in the United States do not carry out punitive amputations or punitive castration, punitive force-feeding to "break" a strike is not allowed.

Third, people on hunger strikes should receive excellent medical care by a team worthy of their trust. These patients' cases can be medically complex. Well before they are considered for force-feeding, patients should be in a hospital capable of managing advanced starvation because the use of force-feeding implies they have developed impaired mentation, which is a relatively late complication of starvation. Equally important to medical skills is ensuring there is a trusted clinician in whom the patient can confide. Some patients will accept being force-fed, but only under the condition that their acquiescence not be disclosed to others, which requires trust and an assurance of confidentiality. Capacity assessment can be a particular challenge, but it is the responsibility of health care professionals. Physicians might find they need to advocate for appropriate resources, such as independent psychiatric consultation or legally required language services (6).

Finally, health care professionals should not have to face these challenges alone. Self-regulation is a core aspect of professionalism, and clinicians must support each other in upholding ethics (7). Health care professionals providing medical care in ICE detention settings should receive support from their colleagues and professional societies when their professional ethics are challenged.

CHALLENGES TO UPHOLDING ETHICAL STANDARDS IN ICE FACILITIES

Many people in ICE detention receive medical care from private prison companies like the GEO Group, Inc. The GEO Group's "clinical practice guidelines" on medical management of hunger strikes in ICE detention facilities (obtained under Freedom of Information Act [FOIA] by the American Civil Liberties Union) illustrate disregard for the ethical standards discussed (8). They indicate that force-feeding of people who are on a hunger strike is used for punitive rather than medical reasons. For instance, the guidelines recommend the initial use of a 16- or 18-gauge plastic nasogastric tube (8 [page 256 of the FOIA cache]), which is typically used for nasogastric lavage or gastric decompression. Large-bore, relatively inflexible tubes are more painful to insert than thin rubber Dobbhoff tubes, which are typically used for tube feedings. The GEO policy also states, "For the majority of [detainees] on hunger strikes, it is safe to administer involuntary enteral feedings in nonmedical institutions" (8 [page 259 of the FOIA cache]). This statement suggests

the GEO Group is force-feeding people well before it is medically indicated to prevent death or serious morbidity. In at least one instance, contracted physicians at GEO facilities agreed to force-feed a patient after multiple local physicians and hospitals were asked and refused (4 [pages 32-33]). This illustrates that health care professionals employed by ICE and its contractors, and those in nearby hospitals, have been asked to participate in procedures that are counter to medical ethics.

WHAT SHOULD HEALTH PROFESSIONALS DO?

Punitive force-feeding and other involuntary medical procedures on people who choose to undertake hunger strikes should stop, and health care professionals should play a role in supporting this reform. Individual health

care professionals who are asked to participate in force-feeding need not face such challenges to their professional ethics alone. They should reach out to the ethics committees of their professional societies for support and counsel, such as the American Medical Association Council on Ethical and Judicial Affairs and the American College of Physicians' Committee on Ethics, Professionalism and Human Rights. Human rights advocacy organizations like Physicians for Human Rights also have resources for aiding health care professionals under threat. These associations must then be prepared to defend colleagues who come under pressure to participate in forcible treatment of patients with decisional capacity, including providing collegial and legal support to those facing threats or adverse consequences for upholding their ethical obligations. Finally, when health care professionals act unethically, professional

Table. Professional Association Ethical Standards Regarding Force-Feeding People on Hunger Strikes

Organization and Relevant Ethical Standards	Reference
<p>World Medical Association (WMA)</p> <p>The WMA's Declaration of Tokyo, last revised in 2016, states, "Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. ... The decision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent physician. The consequences of the refusal of nourishment shall be explained by the physician to the prisoner."</p> <p>The WMA's Declaration of Malta, last revised in 2017, states in part, "Hunger strikers should not forcibly be given treatment they refuse. ... Avoiding 'harm' means not only minimising damage to health but also not forcing treatment upon competent people ... [and] Physicians must respect the autonomy of competent individuals, even where this will predictably lead to harm." It goes on to note that, "Physicians must remain objective in their assessments and not allow third parties to influence their medical judgement. They must not allow themselves to be pressured to breach ethical principles, such as intervening medically for non medical reasons."</p>	<p>WMA. Declaration of Tokyo—Guidelines for physicians concerning torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment. Revised Oct 2016. Accessed at www.wma.net/policies-post/wma-declaration-of-tokyo-guidelines-for-physicians-concerning-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-in-relation-to-detention-and-imprisonment/ on 9 Jan 2022.</p> <p>WMA. Declaration of Malta on Hunger Strikes (2017). Accessed at www.wma.net/policies-post/wma-declaration-of-malta-on-hunger-strikers/ on 7 Jan 2022.</p>
<p>American Medical Association (AMA)</p> <p>The AMA has endorsed the Declaration of Tokyo and stated repeatedly that force-feeding of detained people "violates core ethical values of the medical profession."</p>	<p>AMA. Torture, coercive interrogations and physicians. 12 Dec 2014. Accessed at www.ama-assn.org/delivering-care/ethics/torture-coercive-interrogations-and-physicians on 9 Jan 2022.</p>
<p>American Nurses Association (ANA)</p> <p>The ANA Code of Ethics for Nurses, last revised in 2015, recognizes the right to self-determination, which includes "the right to accept, refuse, or terminate treatment without deceit, undue influence, duress, coercion, or prejudice."</p> <p>The ANA also explicitly supports the right of nurses to refuse to participate in force-feeding.</p>	<p>ANA. Code of Ethics for Nurses with Interpretive Statements. 2015.</p> <p>ANA Hails Decision to Allow Navy Nurse to Resume Full Military Duties. 5 May 2016. Accessed at www.nursingworld.org/news/news-releases/2016/ana-hails-decision-to-allow-navy-nurse-to-resume-full-military-duties/ on 27 Jan 2022.</p>
<p>International Committee of the Red Cross (ICRC)</p> <p>The ICRC considers the involvement of medical staff in force-feeding to be "a gross violation of medical ethics" and opposes force-feeding and forced treatment.</p>	<p>ICRC. Hunger strikes in prisons: the ICRC's position. 31 Jan 2013. Accessed at www.icrc.org/en/document/hunger-strikes-prisons-icrc-position on 9 Jan 2022.</p>
<p>American Correctional Health Services Association (ACHSA)</p> <p>The ACHSA is "the national professional organization serving medical professionals working in corrections."</p> <p>In 1994, the organization issued a position statement on Hunger Striking Prisoners, which called for independent medical and psychiatric examinations, and only if the patient is determined to lack capacity or if "life is in danger" is force-feeding allowable. Notably, this is a psychiatric determination, and it must be clearly documented. A patient can leave confidential instructions with a trusted medical professional about their willingness to undergo invasive procedures in the event that they are no longer capable of communicating their preferences, and such a directive should be honored—but it requires the presence of a clinician the patient can trust.</p>	<p>ACHSA on Facebook. Accessed at https://m.facebook.com/achsa.org/ on 22 Jan 2022.</p> <p>ACHSA 1994 Position Statement, summarized. Accessed at www.ncbi.nlm.nih.gov/pmc/articles/PMC2234321/ on 22 Jan 2022.</p>

societies, state licensure boards, and medical boards must uphold another core obligation of professional self-regulation (7) and be prepared to confront these breaches, including through professional sanctions.

In sum, persons with capacity who choose to protest via hunger strike are human beings with dignity and rights, including the right not to be force-fed by their doctors. Physicians are often in a unique position to help defend the rights of vulnerable and marginalized people. Physicians and their professional associations must work together to do the right thing when physicians' ethics are challenged.

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