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## Medicine, lies and deceptions

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### Abstract

*This article offers a qualified defence of the view that there is a moral difference between telling lies to one's patients, and deceiving them without lying. However, I take issue with certain arguments offered by Jennifer Jackson in support of the same conclusion. In particular, I challenge her claim that to deny that there is such a moral difference makes sense only within a utilitarian framework, and I cast doubt on the aptness of some of her examples of non-lying deception. But I argue that lies have a greater tendency to damage trust than does non-lying deception, and suggest that since many doctors do believe there is a moral boundary between the two types of deception, encouraging them to violate that boundary may have adverse general effects on their moral sensibilities.*

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It is generally agreed that trust is an essential element in the doctor-patient relationship, and it is agreed that there are types of behaviour that doctors should rarely, or never, engage in, since such behaviour undermines this trust. For example, doctors should do their best to explain treatment procedures to their patients and strive to help patients understand their nature and purpose. Doing these things minimises the risk of unpleasant surprises for patients, which can lead to a sense of betrayal. Confidentiality is similarly seen as well-nigh indispensable to the relationship between doctors and their patients, and only to be set aside in a few exceptional circumstances, such as when a patient is likely to pass on the HIV virus to another person, without that person's knowledge. Also crucially important, and increasingly recognised as such within the medical profession, is the duty of openness and honesty. Although not mentioned in the Hippocratic Oath, there has for some while been a growing feeling that doctors have a *prima facie* duty not to deceive their patients.

The notions of honesty, openness, truthfulness and non-deceptiveness are clearly related, though subtly different. They all invite clarification, and there are many occasions when it is not obvious whether a doctor's behaviour conforms to them. My concern is to examine the real or alleged moral differences between deception by means of lying, and other forms of deception, verbal or non-verbal. Is lying always wrong (or at least *prima facie* wrong on account of it being lying), but other forms of deception sometimes acceptable? Or—a different

point—if all deception is wrong, is lying morally worse than non-lying deception? Both the opinion that lying is different, and the opinion that it is not, have thoughtful defenders. The latter view attracts thinkers with utilitarian tendencies, who say that if the foreseeable consequence of some utterance is the creation of a false belief, it cannot matter whether or not this is achieved by lying. Indeed, they might think it can be even more dishonest to try to create false beliefs by means of non-lying deception, as this strategy may involve an attempt to conceal from oneself what one's real intentions are. Others, however, adopt the former view. According to them, although it is by no means always permissible for anyone, including doctors, to deceive without lying, there is something different about lies.

### I

The view that lying is different, and is *prima facie* wrong whereas non-lying deception is not, simply as such, *prima facie* wrong, has been succinctly defended by Jennifer Jackson.<sup>1</sup> The point of the qualification “*prima facie*” is that we can think of lying as significantly different from non-lying deception, even if we accept that there are circumstances when it is permissible to lie. We do not have to be Kantian rigorists about lying, believing that lying is always wrong even if refusing to lie will lead to a terrible disaster, such as someone being murdered. This point is perfectly intelligible and plausible. We should not be seduced by the thought that, if we concede that it is sometimes permissible to lie, we have admitted, in effect, that there is no moral distinction between lies and non-lying deception. It is simply that the circumstances that justify lying have to be special, to match the special nature of lying. However, I wish to argue that there are significant weaknesses in Jackson's argument, and that if we wish to defend the difference between lying and other forms of deception (as, with some qualifications, I do), we need to look elsewhere.

One doubtful element in Jackson's case is expressed in her claim that “the assimilation of lying to other forms of intentional deception makes sense only if one is adopting a utilitarian approach to the issue of truth-telling. Otherwise not ...”<sup>2</sup> Although utilitarians see no intrinsic moral difference between lying and non-lying deception (though it is open to them to find contingent differences which bear on what general rules to adopt) it is false that *only* utilitarians can have reason to deny the moral distinction. Those who deny it usually believe, as Roger Higgs suggests, that what is all

important is the intention to mislead, and not the means employed.<sup>3</sup> (Admittedly, many utilitarians would deny that intention has any moral significance, claiming instead that what matters is the foreseeable result. However, there is room for a form of utilitarianism that gives weight to intention. This is best shown by the fact that utilitarians, like anyone else, may want to evaluate agents as well as actions. Unless they believe in a very strong form of moral luck, they will think better of people who try but fail to maximise the good, than of people who do not try to maximise the good but do so none the less). But it is clear that this concern with intention is not monopolised by utilitarians. An obvious counterexample is the doctrine of double effect, which utilitarians reject. Whether a doctor administers a potentially lethal dose of morphine with the intention of hastening a patient's death, or whether she administers it with the intention of alleviating extreme pain though foreseeing the possibility of hastening death, is believed by many non-utilitarians to have enormous moral significance. The first is euthanasia—or something more sinister if not done with the patient's best interests in mind—and the second is not, or at least so it is commonly argued. This does not, of itself, settle the moral question of whether either is permissible, but those who insist on the centrality of the doctor's intentions, and who also think that deliberate killing is always wrong, can make a moral distinction between the cases on the familiar ground that the intention is different in the two cases.

### False belief

A related point is this. When mentioning intention, we should ask: intention with respect to what? To the final consequences, or to other things as well? Suppose someone asserts that in deciding whether telling a lie, or deliberately misleading without lying, are morally equivalent, all we need to know is the intention guiding each case. We should ask him: is the intention referred to merely the intention to produce a false impression or belief? If so, then we can expect utilitarians to agree that all that matters is the intention, in this sense. However, perhaps the intention being referred to is not (only) the intention to produce a false impression, but also the intention to do so *by* lying, or *by* evading, equivocating or distracting attention. In that case, we can probably expect utilitarians to say the exact opposite to what they said before; they will say that intention does not matter at all. The important thing is not to equate our intentions with our *ends*, or ultimate goals. We intend our means as well as our ends.

In addition, the claim that only utilitarians can sensibly assimilate lying to non-lying deception founders on the fact that rejecting utilitarianism does not determine which normative principles, if any, one adopts. Merely knowing that I am not a utilitarian will not tell you my views on lying, theft, tax evasion, or any issue you care to name. In fact, I might reject utilitarianism because I am a nihilist, thinking that nothing has any moral significance

whatsoever. My rejecting utilitarianism only tells you that I reject the doctrine that the morality of all actions ultimately depends on their consequences. For all that, I might still think that consequences matter a good deal of the time, and that they are the crucial determinant of whether it is better to deceive by lying or in some other way. Or I might think that the distinction between lying and non-lying deception is insignificant, not because they produce similar consequences, but for some other reason.

It is unjustified, then, to suppose that only utilitarians can sensibly (ie consistently with their theory) maintain that it does not matter whether we deceive by lying or in some other way. However, this point is not central to the main issue. More important is to decide whether this judgment is correct. Jackson proposes various arguments for thinking it is not, but at least some of these arguments are not entirely convincing.

### II

An important strand in Jackson's argument is that any community needs to preserve bonds of trust between its members, and that a rule against lying is crucial to this trust. She admits that it is not easy to say exactly how strict this rule must be, and allows that there may be special circumstances that override it. Non-lying deception, on the other hand, is often wrong, especially in medical situations, but it does not, of its nature, undermine trust. In fact, she does not think it is always wrong.

But there are some difficulties with her argument. First of all, some of Jackson's examples of non-lying deception are not obviously cases of deception at all, or at least, not of intentional deception. She says: "We all intentionally deceive one another daily without a second thought. Women wear make-up, men cover their incipient balding with strategic combings, we smile at each other's feeble witticisms even though we are not amused and we feign delight over gifts which fail to please."<sup>4</sup> However, the make-up and the strategic combing of hair may not be intended to create the impression that make-up is *not* being worn, or that the head is *not* going bald. It is more usual for these things to be done simply to enhance appearance, rather than to create a false impression of reality. Of course, the make-up and combed hair may be deceptive, in the simple sense that people may not realise that the natural appearances have been altered. This does not mean that the deception is deliberate. Indeed, we often quite unintentionally cause people to be misled. In some of these cases we realise that the appearances mislead, although we do not intend to mislead. If I go around the countryside dressed as a huntsman, people may reasonably conclude that I am a huntsman, even if the plain truth is that I am an eccentric who likes dressing up, and have no intention of making people believe anything false. Someone who articulates her consonants and talks clearly and precisely, with well-chosen words, will be assumed, by many people, to be public school educated and a snob. This

may be false, but the appearance nevertheless deceives those who judge people according to these criteria.

Secondly, the argument that there is something special about lying is further weakened by the fact that not all verbal falsehood is meant to deceive. This is widely accepted: sarcasm, jokes, novels all involve uttering or writing falsehoods. Of course, there is room for argument here about whether these falsehoods are actually asserted, if they are not meant to mislead. When novels gained prominence as a literary form, puritans objected to them on the ground that they contained lies, claiming things had happened when they had not. But of course the puritans entirely missed the point of novels, which is not to provide historical reports. This much is uncontroversial. However, there are other verbal falsehoods which raise a more difficult question. I suggest that there are some such falsehoods that Jackson mistakenly regards as intentionally deceptive, when in fact it is not clear that there is a deceptive intent.

Many of these falsehoods are regarded as “white” lies—an unsatisfactory description because it begs the moral question in their favour. They are admitted to be intentionally deceptive, but justifiably or excusably so. However, they are sometimes deliberately transparent. Statements such as “I can’t accept your invitation because I’m too busy”, or “We regret that we are unable to offer you the post” (probably two falsehoods there!) are usually coded ways of expressing unwillingness rather than literal inability, and are often meant to be understood in just this way. A completely candid expression, in such circumstances, might be “I do not wish to spend time with you, because I am not interested in you”. Other conventions, like applause at the end of a speech, may serve a similar function. Of course, sometimes such expressions *are* sincere, and this fact can confer ambiguity even upon “merely polite” expressions. This alone might enable a deceptive intent in the conventions, by making those to whom they are directed believe that the expressions *might*, at least, be sincere. But there are other occasions when the truth is transparent to all parties.

These two points—that some of the examples Jackson gives of lying and non-lying deception are not deceptions at all—do not disprove that it matters whether one deceives by lying, or in some other way. Their only purpose is to cast doubt on an argument for this conclusion. There is another issue to be examined, which is probably more relevant to the medical profession: namely, concealment. Is concealment a form of non-lying deception? If so, is it generally more acceptable than telling lies?

### III

It might seem obvious that concealment is a form of deception. To conceal a fact, like concealing bank notes in a mattress, seems more than merely failing to mention the fact, or failing to make the bank

notes visible. However, there is a difference between deceptive and non-deceptive concealment.

To clarify this, let us start with something few people would regard as concealment, let alone deception: the non-disclosure of facts which are of no interest or concern to others, and which one would not expect to be disclosed if true. I have told no one in what order I put my shoes on in the morning; I have not revealed my choice of toothpaste. Were I to go round proffering unsolicited information about these things, people would soon start telling me that they are very sorry, but they are too busy to see me ... etc. I do not care whether people discover what toothpaste I buy, but see no good reason to inform them.

### Trashy novels

But now consider things I would not wish people to know about me, and that I therefore conceal. Suppose I hide my trashy novels, bad taste music collection and dubious videos when people come to visit, so that they don’t find out my taste in these things. Is this concealment deceptive? I do not think it need be. It is only if the visitors are curious about what I watch, read and listen to, and I know that they have come round to find out, that my behaviour would be deceptive. If they have no more interest in these things than in my toothpaste, and if I conceal them just in case they notice them casually, I am not deceiving them, since I am not trying to induce or maintain any false beliefs. Preventing them from forming a true belief is very different from causing them to form a false belief.

One might argue that by hiding the offending items I show a *readiness* to deceive, even if this is not itself deception. But even this is not strictly true, and does not follow. Perhaps I am prepared to reveal my taste in literature and music if asked, but anxiously hope that no one will ask, and hide the offending items so as to reduce the likelihood of the subject arising. The point is that I engage in deceptive concealment only if the context is such that, were it the case that *p*, people could reasonably expect me to reveal that *p* to those who do not already know it.

This brings us to deceptive concealment. Medicine is clearly an area where there are opportunities to practise this. For example, a doctor who does not disclose to a patient a positive test result for a serious disease, is normally, though perhaps not necessarily, engaging in deceptive concealment. This may be the case even if the patient does not explicitly ask for the result or even think about the issue, for a doctor would normally be expected to disclose such a fact to her own patient. Normally the doctor-patient relationship is such that, were there a positive result, a reasonable patient would expect the doctor to disclose it; so if she does not disclose it, that sends the message that it is not, or not known to be, the case. This sort of concealment is an example of misleading without lying.

There are various ways of misleading without lying. Some of these methods are verbal, without being lies; others are non-verbal. An example of the

former would be a doctor who knows that her patient is terminally ill, and who replies to his enquiry as to whether he is terminally ill by saying, truly, “I am happy to tell you that many patients with similar conditions have made a full recovery”. This is a true but deliberately misleading statement, since the intention is to give the patient a false impression of his prognosis. Although nothing false is stated or even strictly implied, there is a clear implicature; the patient reasonably thinks that the doctor would not say this unless she meant to imply that the patient’s prognosis is probably good, and the doctor, knowing that the patient would quite reasonably reach this conclusion, says what she says precisely so that he does so.

There are also verbal methods of concealment—at least “verbal” in a weak sense—which do not involve either lies or misleading statements. For instance, filibustering and skilfully engineered irrelevance, not unlike the techniques of many politicians during interviews, can ensure that the allotted consultation time runs out before the patient can ask the crucial question. Non-verbal methods of concealment would include simple failure to mention important facts, or even refusal to answer questions, though this would be difficult in the surgery. Even in a medical context, such concealment need not be deceptive; the information being withheld might concern a small chance of a relatively mild disorder, that a reasonable patient would not expect to be disclosed. However, the special character of the doctor-patient relationship tends to place the onus of justification on doctors who maintain that particular concealments are *not* deceptive, rather than on those who say that they are.

Perhaps we are now in a better position to return to the main issue. Is it worse for doctors to lie to their patients than to deceive them in other ways, including concealment? Jackson, although arguing that lying has a different moral character from non-lying deception, does think that it is normally wrong for doctors to deceive by any method, for reasons to do with the special responsibilities doctors have towards their patients. But this is not inconsistent with her main thesis; one might make a similar moral judgment about both lying and non-lying deception, but for different reasons. One question now is whether, even if both sorts of deception are wrong, the reasons for the wrongness in both cases are exactly the same. Another question is whether, even if both sorts of deception are absolutely wrong, lying is morally worse than non-lying deception. This question does not contain the paradox it seems to; whereas there are no *degrees* of wrongness—either an act is wrong or it is not—there are degrees of *badness* within the class of wrong acts. The Decalogue forbids both murder and theft, and forbids them absolutely and without exception; nevertheless, murder is clearly worse than theft.

#### IV

In spite of my earlier criticisms, I think there is qualified truth in Jackson’s thesis that there are general moral differences between lying and non-lying deception. Her main argument is that lying threatens trust, whereas other forms of deception need not do this. This argument has its merits, though again needs to be qualified. One obvious point is that it is not only lying that threatens trust: other sorts of deception can do so as well. If we are always dealing with people whom we suspect are trying to pull a fast one, though without actually telling lies, our trust will quickly evaporate.<sup>7</sup> This is so well known that it is enshrined in counsels of prudence that all sensible people follow—let the buyer beware being an obvious one. The car salesman may not claim the brakes work when they do not, but if they don’t work, he won’t tell you that, either. So you have to make your own careful inquiries. However, even though non-disclosure and misleading statements damage trust, they tend not to do so as badly as lying.

#### Two communities

Imagine two communities, one where people lie whenever it is advantageous, and another where people never lie, but are always concealing, devising weasel words, distracting attention, equivocating and filibustering.<sup>8</sup> In the second community, as in the first, life is hard: we always have to be on our guard, looking for loopholes in what people tell us, asking constant clarificatory questions, hiring lawyers to scrutinise the things people tell us in writing (and of course, knowing that the lawyers also behave like this, misleading us about their fees, and so on...). However, if everyone abides by the “rule” of never lying, we can get some reliable information from them if we persist carefully enough. This is not so in the first community, where trust is more severely impaired. Of course, the scenarios are unrealistic, most obviously because people who mislead without lying, usually lie as well, when “necessary”. But this supports the point I am making. If people stuck only to misleading and never lied, some vestiges of trust could still remain.

We might put this point roughly as follows. Alongside the people who have no scruples about lying, let us imagine others who, lamb-like on the way to the slaughter, are somehow incapable of detecting lies and always believe every statement they are told, when they are told it. Additionally, when the liars contradict their earlier lies with new lies, the innocents fail to notice this. An implausible situation, of course, but one that illustrates the point, which is that these innocents stand no chance against the liars, but do stand some chance, however small, against the non-lying deceivers. Believing what the non-lying deceivers tell them, just as they believe the liars, their extreme gullibility does not compel them to draw the inferences that the non-lying deceivers wish them to draw. The idea is that deceiving without lying—or as we



should perhaps say here, *attempting to deceive* without lying, since “to deceive”, unlike “to lie” is a success-verb—gives its victims more of a chance to get things right, than does attempting to deceive by lying. Of course, in reality few people are like the innocents in the example, and many people can resist lies just as they can resist other attempted deceptions. But resisting lies is a significant *further step*; it requires a greater degree of wily and shrewd self protectiveness. Lies tend to place more demands on people’s self-protective capacities than do non-lying deceptions.

No doubt this point could be developed. But we shall conclude with another consideration that suggests that lying is different from, and perhaps worse than, non-lying deception. To understand it, it is useful to return to the medical context. Deception, we agreed, is generally a bad thing in medicine, partly because of the importance of trust in the doctor-patient relationship. But many people, including doctors, experience a certain psychological aversion to telling lies; they feel that a certain important boundary has been violated when a lie is told. As we have seen, people like Roger Higgs, David Bakhurst and many utilitarian-inclined theorists, say the threshold between lying and non-lying is no more important than that between deception and non-deception, and that it is irrational and even superstitious to think otherwise. However, that is not how things seem to many of us. Perhaps from sheer conditioning, or (probably more rarely) from the sort of argument we have been discussing, many people do think they have done something quite significant when they tell a lie—at least, a lie about a fairly important matter. Reason may argue otherwise, but even if it does so successfully (which is doubtful) ordinary human psychology is not so finely tuned that it can easily adjust itself to moral revision without risking undermining other, genuinely valuable instincts. This fact alone is a plausible basis for a kind of rule-utilitarian adherence to a presumptive moral distinction between lies and other deceptions, and, indeed, one of the strengths of such a stance is that

it warns us against acting according to the views of Higgs *et al*, even if their arguments are sound. One of the historical errors of rationalism in ethics and politics is the assumption that people will always respond rationally to rational arguments. We know that very often they do not. At the same time, admittedly, it is not always right to stick by the dictates of commonsense morality, which contains a number of inadequacies and inconsistencies. Knowing how far to go in rethinking the instincts of common sense is one of the most important questions of practical ethics, and its solution requires knowledge of empirical disciplines, such as psychology, as well as purely theoretical thought.

In summary, there is good reason to support a presumption that it is a more serious matter to lie than to deceive without lying, although, of course—and especially in medicine—the latter is usually highly reprehensible as well. But not all the arguments suggested in support of this conclusion are entirely successful, and there is much for casuistry to do.

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#### References and notes

- 1 Jackson J. Telling the truth. *Journal of Medical Ethics* 1991;17:5-9.
- 2 See reference 1: 5.
- 3 Higgs R. On telling patients the truth. In: Lockwood M, ed. *Moral dilemmas in modern medicine*. Oxford: OUP, 1985.
- 4 See reference 1: 7.
- 5 This point is nicely made by David Bakhurst in his reply to Jackson’s article. See Bakhurst, D. On lying and deceiving. *Journal of Medical Ethics* 1992;18:63-6.
- 6 I owe this example to Stephen Wilkinson, who suggested it in a workshop on this subject run by the Society for Applied Philosophy.