The Case for Deception in Medical Experimentation

J. David Newell

Any attempt to argue in favor of deceptive practices is bound to meet with at least initial resistance. In the context of health care activities, where what goes on is often quite literally a matter of life and death, deceptive practices would seem to be totally objectionable. But with a little reflection, we might be led to alter our generally negative attitude toward using deceptive techniques in medical experimentation. One of the aims of this essay is to engage the reader in this sort of reflection. In what follows, I shall argue that deception, when properly understood, can justifiably be used in research involving human subjects even where informed consent is not obtained.

The case for deception will be presented in two phases. In the first section, I will attempt an analysis of the concept of deception itself, with a view to showing the many and diverse forms which deceptive practices may take. The argument there is designed to show that deception can be understood as a morally neutral strategy. I maintain that this is the sense of the term which is needed to establish a moral justification for the use of deception in human experimentation. In the second section, I shall use this sense of the term in presenting an argument for deceiving human subjects in certain circumstances. If my arguments succeed, I hope to have taken some of the edge off our general reticence to approve of deceptive research.

1. The Concept of Deception

Discussions concerning the use of deception in research involving human subjects have generally failed to give sufficient attention to an analysis of the concept of deception itself. In this section I shall argue that deceptive practices take many forms, and that there is a perfectly good sense of the term in which deception turns out to be a morally neutral notion. Moreover, the sense in which deception is a morally neutral notion is an important one for a proper consideration of the use of deception in human experimentation—which is the central concern of this essay.

A principal difficulty with trying to say something positive, from a moral point of view, about deceptive practices is the close identification in ordinary thought between deception and lying. Lying is generally thought to be morally wrong, and because lying and deception are closely associated, deception is ‘contaminated by association.’ But, as we will see, lying and deception are not synonymous notions, however much we may be in the habit of linking them together and no matter how similar our emotional responses to each seems to be. One phase in coming to understand my position, then, is a purely psychological one: we must try to resist the strong temptation to identify all deceptive practices with the practice of clear-cut lying.

The request to resist this temptation is based on a conceptual matter; it involves the claim that while all lying is a kind of deception, many forms of deception are not ways of lying. This claim is neither strange nor startling. In fact, it is a claim made by both consequentialists and deontologists. Sissela Bok, in Lying, makes the point in the following way:

When we undertake to deceive others intentionally, we communicate messages meant to mislead them, meant to make them believe what we ourselves do not believe. We can do so through gesture, through disguise, by means of action or inaction, even through silence. Which of these innumerable deceptive messages are also lies? I shall define as a lie any intentionally deceptive message which is stated. Such statements are most often made verbally or in writing, but can of course also be conveyed via smoke signal, Morse code, sign language, and the like. Deception, then, is the larger category, and lying forms part of it.

The crucial point for our purposes is the claim that lying is a particular part of the larger category of deception. That is, lying is just one among many possible deceptive activities. For Bok, the emphasis is clearly on telling (in written or spoken form, broadly understood) lies, as opposed to withholding information, ducking the question, etc. Other forms of deception, for Bok, also involve intentionally communicating messages designed to mislead or to make others believe “what we ourselves do not believe.” But unless the message is stated in some fashion it is not a case of clear-cut lying. This will seem arbitrary on first blush and Bok’s defense of it along vaguely consequentialist lines is not very convincing.

Oddly enough, we can make Bok’s view (that telling a lie is distinguishable in a morally important respect from other forms of deception) more plausible by appeal to the views of a deontologist like Charles Fried. Fried would agree with Bok in that he holds that “every lie is a deception, but the reverse is not true.” Fried argues’ that lying is an act in which someone asserts something he or she believes to be false to someone else entitled to the correct information. In the example of a letter containing a false accusation against someone which is intentionally left where you will find it and read it, Fried argues that

I have intentionally deceived you into believing the truth of the allegations falsely asserted in the letter, but I have not lied to you ... because I have not asserted anything to you. Though I have caused a false belief in you and have done so intentionally, I have not done so by reference to the institution according to which you know and I know that you know, and you know... that I make assertions, inviting belief by you.

For Fried, the key notion is the institution of truth-telling or communication in which both parties participate by making certain assumptions. Fried sees an assertion as a type of promise in which assurances are give by the speaker that his/her assertions are true. In the case of the letter left lying around for you to read, the normal conditions of participation in the institution of truth-telling are not met. You are not someone entitled to the correct information. Hence, it is possible for you to be intentionally deceived without being lied to. And hence, being deceived and being lied to are not the same thing.

Fried thinks we have a moral obligation to refrain from doing what will destroy the basic institution of truth-telling. But he does not see any reason for saying that it is wrong to create a false impression. He says that, while lying itself is intuitively
wrong, “there is no corresponding intuition that inadvertently (though knowingly) creating a false impression is categorically wrong.” Moreover, in Fried’s view, we do not even have a moral obligation to promote the truth:

I have not argued for an obligation to further or promote the truth. To urge such an obligation, to urge that it is wrong to fail to pursue and to promote truth wherever possible, would be absurd ... but the value of truth must be balanced against all other goods and  

eqs whiles with which it competes.

The bottom line on this issue for Fried is the preservation of the institution of truth-telling, the sanctity of which is only challenged by direct bold-faced lies to persons who are entitled to expect the truth. Perhaps the consequences of undermining this basic institution of truth-telling are among the bad consequences to which Bok alludes. Both Bok and Fried can be seen as joining hands on this issue and on the claim that deceptive practices which do not challenge the basic institution of truth-telling are not automatically unacceptable practices (other things being equal).

We are now in a position to suggest that deceptive practices (exclusive of clear-cut lying) are themselves morally neutral strategies for getting certain jobs done, for accomplishing certain ends. Like any other human instrument, a deceptive practice can be put to both good and bad uses. The instrument itself is morally neutral. It is its use by human agents that makes the moral difference. Beyond clear-cut lying, we might identify nine forms of deception which humans use as strategies in coping with various situations:

1. **Evasion**: systematically ignoring the request for information while pretending to respond to the inquiry.
2. **Suppression**: deliberately leaving out or withholding relevant information.
3. **Euphemism**: substituting an agreeable or inoffensive response, for one that is disagreeable or offensive.
4. **Exaggeration**: making the truth seem ridiculous by stating it in hyperbolic terms.
5. **Changing the subject**: a more direct form of evasion.
6. **Disguise**: putting on an appearance which masks one’s true feelings or condition.
7. **Gesturing**: employing ambiguous body movements to create a misimpression.
8. **Silence**: saying nothing in a context in which such silence is likely to be taken a certain way.
9. **Inaction**: like silence, this involves not doing something in a context in which this has import.

These nine deceptive strategies can be understood as morally neutral in **themselves.** It is the use we put them to that is subject to moral valuations. If we take a purely trivial but widely practiced custom in our society, we can see that almost every adult uses one or more of these deceptive practices in dealing with small children who believe in Santa Claus. Many adults would refuse deliberately to lie to a child, while employing every other means of deception short of lying to promote the child’s cherished belief. The same may be said about Aunt Hilda’s hideous new Easter hat.

There are other contexts in which the issues are much more serious. For instance, is it really wrong for an ex-convict or a former mental patient to use evasion or silence to conceal a past which, if kept secret, harms no one? Are we prepared to argue that the use of plainclothed detectives, unmarked police cars, undercover narcotic agents, camouflaged armies, and CIA agents (spying for our side) are all morally unacceptable practices? It is not difficult to imagine situations involving these phenomena which are every bit as serious or significant as the use of similar strategies to do good things in medicine. These examples show that deceptive strategies themselves are instruments which can be used for either good or bad purposes. Like a dinner knife which may be used to cut meat or commit murder, these instruments, as instruments, are morally neutral.

The scrupulous person can make every effort to avoid clear-cut lying and in this regard enjoy considerable success. But no one can avoid altogether the multitude of deceptive maneuvers we make on a day-to-day basis. Some will want to say that smiling at your disagreeable next door neighbor or refusing by evasion or exaggeration to shatter a child’s belief in Santa are not really deceptive practices. But deceptive maneuvers we make on a day-to-day basis. Some will want to say that smiling at your disagreeable next door neighbor or refusing by evasion or exaggeration to shatter a child’s belief in Santa are not really deceptive practices. But

**II. Deceiving Human Subjects**

One might consistently hold that it is morally acceptable to allow human beings to be used as subjects in experimental research, and that deceptive practices are sometimes morally justifiable in certain situations in lie, but deny that it is ever right to use deception on human subjects in research. We win now try to make out a case for saying that deceptive practices are sometimes morally acceptable features of medical research designs, even when informed consent is not obtained.

Strong opposition to the use of deception, such as placebos, come from both consequentialists and deontologists. Sissela Bok cites some of the principal bad consequences of placebo prescriptions:

Spending for them runs into millions of dollars. Patients incur greater risks of discomfort and harm than is commonly understood. Finally, any placebo uses that are in fact trivial and harmless in themselves may combine to form nontrivial
practices, so that repeated reliance on placebos can do serious harm in the long run to the medical profession and the general public?

The serious long-run harm to the medical profession and the public which Bok has in mind here is the general breakdown of trust in physicians on the part of the public. Bok does not think the prohibition against placebos should be absolute however. She allows that by obtaining the consent of the subjects to the experimental design we can “remove the ethical problems having to do with deception.”

Even more enthusiasm is shown for informed consent by the deontologist. Deontological moral theorists advance the principles of autonomy and respect for persons as central theses in their model of ethical reflection. They would urge that nothing will do more to secure personal autonomy and personal integrity than the insistence upon informed consent by all subjects participating in human experimentation, especially where deceptive practices are involved.

On a pluralistic model offered by Childress, “voluntary and informed consent” is a central notion and apparently deceptive practices are allowable where such consent is obtained:

There is a moral presumption for providing all the information that a reasonable person would want and all that this particular person wants. It is a conclusive presumption in that deception is ruled out; it is a rebuttable presumption in that some information may be withheld, or only partially disclosed ...

It is clear from this passage that Childress does not see withholding information or disclosing only part of it as forms of deception. He does not offer a definition of deception but there reason to think that he is using it as synonymous with outright lying. If so, his “conclusive presumption” is against only one form of deception, the clear-cut lie, rather than all forms of deception. The presumption against other forms of deception, however, might be rebuttable for Childress if his criteria can be met. This means that, for Childress, deceptive practices can be used in research involving humans only on the condition that, among other things, voluntary and informed consent is obtained.

The standard approach to obtaining informed consent is by asking the research subject to sign a consent form verifying voluntary and informed participation in the project. But the track record on the actual use of such forms is not very impressive. In an empirical study of the use of consent forms by institutional review boards, Gray, Cooke and Tannenbaum discovered that ten percent of the forms in actual use omitted a description of experimental procedures, twenty-three percent said nothing of the purpose of the research, a whopping forty-five percent omitted the benefits of the research to the subjects, and thirty percent had nothing to say about the risks involved for the subjects. Gray, Cooke, and Tannenbaum also found that consent forms tended to be written in academic or scientific language that may be difficult for the lay person to understand. In more than three fourths of the consent forms, fewer than ten percent of the technical terms were explained in lay language.

And even where the consent forms are actually understood, one cannot overlook the vulnerability of the average patient-subject vis a vis his or her physician-researcher when asked to sign such forms.

It is very doubtful that these problems with consent forms have been solved in the few years since the Gray, Cooke, Tannenbaum report was published. It may be that these problems are themselves insoluble-given the nature of the activity in question. It would not follow from this that informed consent is not a useful and valuable ideal to pursue. On the contrary, every effort should be made to secure genuine informed consent whenever and wherever desirable. We should also continually seek ways of solving the problems associated with this important notion. But once we are aware of its limitations, we might be less inclined to rely so very heavily on securing it as the basis for ethical reflection on these research issues. In fact, toward the end of this essay we make some practical suggestions which make reliance on informed consent, especially where deception is involved, far less significant than Bok and Childress make it.

With or without informed consent, it is not at all obvious that deceptive strategies always harm research subjects. The use of such deceptive techniques in allowing (encouraging, enabling) children to believe in Santa Claus seems not to have done much damage to the hundreds of generations of children who have been subject to it. Charles P. Smith did a study on the effects of deceptive practices used in research experimentation and he found that deception per se has a different meaning in the context of scientific research than it has in everyday life. Most subjects understand that deception is a necessary aspect of some kinds of research and find it justifiable under such circumstances.

In other words, the possibilities of deceptive strategies in research were found to be a matter of how the game is played in experimental contexts. We can see certain parallels to bluffing in poker or to faking injury to get a foul called in basketball. Clearly, the stakes are much higher in medical research than they are in these games. Moreover we usually know exactly what kinds of deception we are subject to in a game, though the same cannot always be said for medical experimentation. Furthermore, as players in a game we usually get a chance to be the deceiver as well as the deceived, but in medical research no such equal participation is possible. So the game analogy cannot be pressed too far. Still, the basic idea offered by Smith is that most people expect deceptive techniques to be used in research whenever necessary to achieve a worthy end. Smith found no evidence to support the claim that in cases where no physical harm befell research subjects there was discernible harm to their psyches. A similar finding, based on several such studies, has been reported by Leonard Berkowitz.

If there is evidence to show that deceived subjects suffer psychological harm from being deceived, and if informed consent suffers from the difficulties cited earlier, it would seem that all we really need is clearly established and carefully followed procedures for protecting research subjects from physical and (obvious) psychological harm in order to justify using (non-assertional) deceptive techniques of the sort sketched in section I above. The researcher can evade, suppress, exaggerate, disguise, gesture, and so on, in order to deceive the subject of a medical experiment-without that subject’s consent and without telling that subject a single lie. In fact, such forms of deception may be used to avoid outright lies, i.e., to protect or
preserve the institution of truth-telling. And their use must always be justified in terms of the beneficial consequences achieved. Outright lies will always have at least the potential consequence of undermining the institution of truth-telling and the consequences of this are in turn simply disastrous. So medical research which requires outright or clear-cut lying may never be morally justified. But the other deceptive techniques, when used, may be understood and accepted as merely part of standard research practice.

A rule Utilitarian might set up the “research game” in such a way as to recognize the validity of deceptive techniques in research design. Anyone who participates in any research program could become aware of this aspect of research in much the same way anyone who learns poker becomes aware of the bluff. Clearly stated strategies involving deception could be shown to have potential to contribute greatly to the unbiased nature of the data collected. The recognition that deceptive strategies are part of the way the research is done would preempt the danger that such research activities would undermine the institution of truth-telling. We could say that researchers and their subjects more or less belong to a deception club (a weaker version of Fried’s “lying club”):

My argument is that there is a moral right (nonconsequentialist) to enter into lying clubs, so long as these clubs do not have the consequence of undermining the institution of truth-telling.

And as long as such arrangements are productive of maximum benefits for all, we could base our research game ultimately on rule utilitarian grounds.

In establishing procedures for the “research game” which allowed deceptive practices, we could insist on every research proposal being doubly reviewed. First, it would be reviewed by a properly constituted institutional review board. Second, because it involved a deceptive technique, it would also be reviewed by a Surrogate Committee on Deception, the sole function of which would be the screening of research proposals involving deception. The aim of the surrogate committee would be to see that the subjects are not harmed (to whatever extent such determination can actually be made). In addition, every research proposal involving deceptive strategies would be published in some sort of newsletter and made available to diverse audiences. This would conform to what Sissela Bok called “the test of publicity” for justifying the use of deception. We could further insist on a genuine debriefing after the experiment has concluded in which the research subject would be given as much information as he or she might be reasonably entitled to have. Finally, we could protect the trustworthiness of the profession (the public’s need to trust in it) by requiring that the deceptive techniques be used only by researchers who are not also the physicians of subject-patients. A game played by this set of rules would hardly be a game of chance for the research subject. Such controls on the activities of researchers would seem to make reliance on the voluntary and informed consent of the subject very minimal, and in some cases unnecessary. If, at the same time, research projects involving such deceptive strategies carry us rapidly forward in the cause of curing diseases and improving the condition and quality of human life, what is to be gained by challenging their validity?

Conclusion

I have argued that, if deception is understood as a morally neutral strategy, all forms of deception except clear-cut lying can be justifiably used in medical research. The elimination of clearcut lying (and the inclusion of the other forms of deception) turns on consequentialist considerations. The frailties of the informed consent notion, however, make the need for special committee reviews, publicity, and follow-up work on deceptive research much more imperative. Given that such procedures are followed carefully, we stand to gain a great deal from allowing research in medicine which employs deceptive techniques.