

Consilium 71

Regarding the Title: Concerning Pestilence and Contagion and the Title: Concerning the

Errors of Physicians

Translated by Patricia Coyne

Argument

In the past year, 1656, when the pestilence was spreading unchecked here in the City and the number of sick was increasing at an astonishing rate, it was necessary to confine them to certain places in order to separate the sick from other persons who were not infected and so that they could remain isolated to prevent bringing death to others: and when there was a discussion about the physician to be appointed to attend them, it was deemed the responsibility of the Holy Congregation of Health to choose someone suitable carry out this duty and in addition to offer a reward; the duty of care had to be entrusted to a courageous man, since whoever chanced to be chosen had to minister to the sick segregated by the plague by living with them in the same place. For this reason the question was asked whether and in what circumstances a physician could be compelled to give care and what he could be compelled to do in a time of plague. For the sake of the truth, therefore, I have consulted the discourses of most illustrious men and have examined this question as follows.

Summary

1. The duty of caring for the sick is a public duty which even an unwilling person is obligated to exercise. As number 35.

2. A physician is duty bound to give care to a sick person whose life is in danger, otherwise he will be held on a charge of homicide if the sick person should die.
3. A physician is strictly bound by law to give care even against his will. As number 36
4. A person with pestilence is said to have been placed in danger of death.
5. When and who may be said to be placed in danger of death
6. A physician who refuses to tend a sick person, when he is able to heal them and who then dies, is said to have killed that person.
7. A physician is bound to give care even to those who are unwilling and refuse care and even those who are ungrateful. See following number.
8. See number 39.
9. A physician enjoys many privileges so that he may take on the care of public health.
10. The services of a free Art ought to be free.
11. A physician receives remuneration in the form of an honorarium.
12. A physician cannot be forced to do those things which his Art does not oblige him to do.
13. The plague is an incurable disease sent by God. See number 44
14. A physician who practises medicine in a way contrary to the principles of his Art is making a grave error.
15. A physician is not bound to give care in hopeless cases.
16. A jurist cannot be compelled to take upon himself the defence of a hopeless case in a court of law.
17. A physician who undertakes the care of a hopeless case does harm to no one. See also number 44.

18. No one is constrained to look out for the health of another when there is danger to themselves. See numbers 42 and 45.
19. The first work of Charity is to care for one's own health
20. A person who approaches a place infected by the plague is said to test God.
21. A physician who is not employed by the state cannot sometimes be compelled to give care. See numbers 46 and 47.
22. A physician employed by the state is not obliged to take extraordinary cases.
23. A physician is not bound to tend the sick when there are other doctors available.
24. A physician is not bound to care for a poor man if there are other doctors available who are able care for him.
25. A physician can sometimes be compelled to give care when there is no other doctor able to do so.
26. In a time of plague even a physician who has not been employed [by the state], can be compelled to give care when no others doctors are available. See the following number.
- 28 In a time of plague, when there are several doctors in a place, none of whom wishes to give care, one or more can be compelled to give care according to the result of a casting of lots.
29. When several persons wound a man who then dies, no one of them may be condemned to the punishment for homicide except in extraordinary circumstances. See the following number.
31. In the case of a disease where no contagion is involved, any physician can be compelled to give care when no other physicians are available.

32. Although a physician can sometimes be compelled to give care in the case of an infectious disease, he can never be compelled to live together with those infected.
33. In a time of plague, a physician can serve through a substitute.
34. A physician cannot be compelled to give care without remuneration, which in a time of plague ought to be greater than usual
35. There are two kinds of public duties.
37. Public welfare must be put before private welfare.
38. A physician may sometimes accused of causing the death of a sick person if he has neglected to give him aid.
39. A physician is not bound to give care to those who refuse it or are unwilling unless they are demented.
40. When and to what extent is a physician bound to give care on account of privileges which he enjoys.
41. The obligation of a practitioner to exercise his Art when the necessity of public safety demands this service takes nothing away from the freedom of the Art.
42. The interests of public safety outweigh any argument to the contrary.
43. When a physician can rightly undertake the care of incurable diseases.
48. Those who have a place in the practice of medicine also have a place among others who come under the name of physician and are considered to be among his assistants.
49. Physicians cannot be compelled to give care by violence or threats, but they may be easily convinced by the offer of a sufficient reward.
50. An exhortation to doctors.

There are many arguments which can be put forward to demonstrate that a doctor can be obliged and even compelled to give care, yet there are just as many which argue the contrary opinion. Therefore, each argument must be examined separately, both those which are seen to present the affirmative position and those which argue the negative so that in this way, with the arguments set out one at a time on the scales, we may arrive at the truth of the matter.

1.

First. The arguments for the positive are stated, namely that a physician can be obliged and compelled to give care since the duty of care is a public service which any public servant, even one who is unwilling, is bound to undertake, as Ripa states on this very proposition: *Ripa in tract. de Peste. part. 2. partic. ultimo. num. 90, and Carrocius de loc. & cond. part. 3., quaest. 8. n.16 and following ad interpr., l. Ne cui, C. loc.* Thus a physician can be compelled by a judge to offer his services. Moreover, I ask are public services demanded of specific persons on condition that they offer these services to assist the public in an emergency? For specific persons are appointed as suitable for this particular service and for public duties to no purpose unless they can be bound to practise their duties, at least whenever necessity requires this service, even though they are unwilling; for if they cannot be compelled, it does not seem that the public interest is sufficiently provided for.

2-5.

Second. A physician is bound to give care to any person in danger from an

existing disease, to the extent that if he is negligent and refuses to give care and the person dies, he is considered to have killed that person, again see Ripa *the same work num. 78*. For, as Seneca said, cited by Joan. Bapt. Codroch. *de Christ. med. rat. lib. 1. cap. 33*, he who is able to give succour to one about to perish dies himself when he does not give care. Indeed, not only is a physician bound to give care to a sick person who is in manifest danger, but simply and without exception he is bound by strict law to give care, even though unwilling, otherwise he commits mortal sin, so Ripa *loco citato num. 88*. This especially applies when no other physician is present who is able to aid the sick, for if he has abandoned the sick, then no law, no ingratitude or whatever other reason excuses him from mortal sin, as physicians attest, Joan. Baptist. Silvatic. *in suo Med. cap. penult.* Consequently, with this understanding of the truth of the position, a physician can even be compelled to give care by a bishop so that he may cease from sin, as Ripa adds next. Therefore, if a physician can be so obliged to give care that he can be compelled to give care at any time, how much more can he be compelled to do so when the sick are placed in clear danger of death and when the sick are placed in even greater danger of their lives, as when they are taken with the plague? For it is certain the plague is a danger of this kind and it is with very good reason that a person infected with the plague is said to have been placed in mortal danger, Ripa, see below, *num. 46.*, Paris. *de Resign. benefic. lib. 12. quaest. 6. num. 13*, and very rightly, since a person is said to have been placed in mortal danger when he has been placed in manifest and proximate danger of death: Ripa *in tract. de Pest. part. 2. partic. 3. num. 47*, Navarr. *in 2. part. Decretal. cap. 26. n. 31*, Barbos. *de offic. & potestat, Episcop. alleg. 15 .n. 52. part. 2*, he who is seized by the plague is placed in such manifest

danger of death that he can hardly ever hope to escape it, certainly when scarcely one out of ten is saved from the virulence of the plague and usually even fewer survive since it spares no one, as I said elsewhere, *lib. 3 Quaest. Medico-Legal. tit .3, quaest. 2. num. 15 and following*, Rodericus a Castro *libra 3. Med. c. Polit. cap.18*. That this is true is attested also by very many jurists and doctors and other professors writing about the plague, for this is the one characteristic of the plague by which it is distinguished from a simple epidemic, namely that it kills the greatest number of people possible, Galen. *lib. 3. in tertium Epid. cap 20*.

6.

Third. According to the works which have been consulted, he who does not wish to give healing when he is able to do so is considered to have killed, according to *1 Regum*, Rodericus a Castro, *loco citato, cap 13*, Codronch *de Christ. med. rat. lib. cap. 34*. Indeed, since by the law of Charity each individual is bound to protect another person if that person is in danger of being killed by someone and otherwise that individual commits a mortal sin, see Alphons. Vivald. *in Candel. Aur. part. 3. tract. de Irregul. & 6. de Homicid. n. 5*, so much more will a physician be bound to heal the sick, especially one who is in clear danger of his life, as when a person is seized by the plague. This is also proved a fortiori since out of human kindness and piety physicians are bound to offer care to enemies and to extend help to those imploring aid, even to barbarians and to any person whomsoever, even to the veriest strangers, and as likewise Rodericus a Castro loco citato adds: how much more will we be bound to heal our fellow citizens and our brothers placed in extreme danger of death lest they perish from the plague? If we deny this help and rightly incur the the stain of impiety against

ourselves, everyone will be able to rise up and, not without reason, assert that we are considered to have killed them and thus we will be charged with homicide, as was stated above.

Indeed consider what the law of Charity embraces, as it is extended even to the beasts, for in *Deuteronomii cap. 22. vers. 4*, the sons of Israel are commanded to help an ass or an ox which has fallen. *Si videris Asinum fratris tui, aut Bovem occidisse in via, non despicias, sed sublevabis eum eo.* [If you shall have seen the ass or the ox of your brother which is fallen on the path, you shall not look aside, but raise them up with him.] How much more, therefore, does this same law of Charity oblige us to help our neighbour who is in danger not from some accident or other but who has been overcome by certain destruction and inevitable death unless help is given immediately?

7.

....Fourth. A physician is fettered by such a strict tie of obligation to give care that he is bound to offer help and healing not only to those who are willing and asking for help, but even to those who are not willing and thus who refuse help, Abb. *in cap. ad aures, de aetat. & qualit. n. 7*, Ripa *de Peste, part. ult. partic. 2. num. 103*, Navarr. *in Manual. cap.25. n. 6.* and others among the experts in Canon Law cited in Codronch. *ex Medicis loc.cit.*

8.

Nor is a physician bound to give care only to those who offer recompense, but also to those who are ungrateful and refuse to offer remuneration, since the Art is binding even for such as these, Hippocrat. *libr. de Praecep. num. 4*, who says : *Nam multo melius est a morbo convalesenti exprobare, quam calumniose affectos deferere.* [For it is much

better to reproach someone one recovering from a disease than to neglect to their detriment those afflicted.] Therefore, as one bound by a greater obligation, he must be resolved to give care to the sick who implore him for help against the approach of death.

A physician is considered to have no possible way to escape from these injunctions. Indeed, rather he must be compelled by the highest justice to give care to those who are in failing health and especially to those placed in evident danger, as are those suffering from the plague, who are suffering under a much greater necessity, so great indeed that unless he immediately gives them help, their lives are over.

9.

And finally, since physicians have attained the laurel crown of a doctorate, they are honoured with many privileges solely because they bear the responsibility for the care of public health, *lib. 1.1. de variar. & extr. cognit.* Indeed, Galen attests, *lib. 1. de Décret. Hippoc. & Plat. cap. 5. in princip.*, that this is so and it is for this reason that many are called to practise medicine, that is because of the immunity from the laws granted to them and the exemption of the state. To this there is taken into consideration also the law stated by the emperor Julian which exists among his works after *Epist. 25. edit. Paris.* whose words are as follows: *Artem Medicam Hominibus salutarem esse, usus ipse demonstrat; quare eam a caelo delapsam non immerito Philosophi praedicant; etinim Naturae nostrae infirmitas, & valetudinis offensiones, quae quotidie incidunt, per hanc corriguntur: quamobrem sicut aequitatis ratio postulat, nos superiorum Regum auctoritatem, & vocem secuti, pro nostra humanitate jubemus, vos Senatoribus muneribus liberos in posterum vivere.* [its very practice demonstrates that the Art of Medicine is beneficial to mankind, wherefore the philosophers rightly proclaim

that it came down from heaven; for the weakness of our nature and the misfortunes of sickness which daily occur are set right by it; for which reason, as the doctrine of justice demands, non by the authority and voice of earlier kings, but for the sake of our humanity, we order you to live henceforth free from the duties of senators.] Therefore, for this very reason, physicians are considered also to be bound to give care to the sick, even though they are unwilling. Moreover, since they are obligated to do this because it is to their own advantage, in no way and with no excuse can they release themselves from their responsibility, but are under absolute obligation, especially in times of the direst necessity or in the midst of a virulent plague, to offer aid by giving care to the sick; for when they give care in time of plague they are enriched by other privileges and exemptions and their remunerations are also increased, and rightly, because they expose their own lives to manifest danger. Therefore, the service of a physician giving care in a time of plague to those who are infected with the plague deserves much more than if he were to give care to those sick from other diseases; *Corneus consil. 347. num. 6. insin. vol. 1.* Moreover, in this respect doctors are considered to be the same as soldiers, for soldiers also enjoy many privileges but are also bound to serve even against their will unless they obtain their discharge. The same also must be said of physicians after they have attained the laurels of a doctorate and wish to enjoy the privileges granted to this rank.

10, 11, 12.

Some, however, who for their part are not altogether without reasons with no less weight, advocate the contrary position, namely that a doctor cannot be compelled to offer care. First. The Art of Medicine is a free art and the services of a free art ought

also to be free, Hippocrates in *Epist. ad Abderit.*, and although by accepting a fee, a physician constrains his art to serve, as Hippocrates *ibid.* added, this constraint only occurs when a doctor accepts what is offered to him as a fee and is eager to demand payment acrimoniously and forcefully, as if it is owed to him, not when he accepts something as an honorarium and a sign of gratitude; for then if he is given something, he accepts it and if nothing is given, he does not demand anything, for so he is bound to do by the precepts of his Art. Therefore, since a physician has in no way obliged himself to serve and give care to anyone, he cannot for any reason be compelled to do so, since clearly he is not bound to give care, much less will he be bound to do so in a time of pestilence.

13, 14

Second. Specifically in respect to the plague, a physician cannot be compelled to do those things which his Art does not oblige him to do, but by the precepts of his Art a physician is not bound nor should he undertake the care of incurable diseases, as, according to the precept of Hippocrates and the consensus of all doctors, Rodericus a Castro reports in *Medic. Polit. lib. 3. cap. 18*. The plague is an incurable disease, as this same Rodericus proves *ibid.*, since the plague is a disease sent by God, as all those writing about the plague admit and therefore it is called a trial of God with mankind which the strength of man is not able to resist; Ripa *de Pest. part. 1 num.*, for such diseases cannot be cured by human Art or natural remedies and therefore a physician cannot nor ought not be compelled to care for those infected with the plague; indeed, he ought to abstain from giving them care, if he wishes to act in accordance with the dictates of his Art, otherwise he would be acting contrary to the precepts of the Art which

prohibits undertaking care of those who have succumbed to the disease. Moreover, a physician who acts against the dogmas of his Art errs greatly, as is proved elsewhere

lib. 6. har. quaest. tit. 1. quaest. 7. n. 2.

15,16, 17.

But also a physician is not bound to bring help to those whose lives are despaired of, according to the precept of Hippocrates *in lib. de Arte, num. 4*, and Celsus *lib. 5. sua Med. cap. 26*; on their authority Zacutus Lusitans, *in introit. ad Praxim, Praecept. 16* and those jurists in agreement state that as a jurist cannot be compelled to take on the defence of a hopeless case, just so a physician cannot be compelled to care for the hopelessly ill, as also Rip. *de Peste, part. 2. partic. ult. num. 92*, although more truly and reasonably he says to the contrary *ibid.* that a doctor undertaking the care of a hopeless illness does injury to no-one, as does an advocate taking on the defence of a hopeless case; however, it is certain that a physician brings help to those who are despaired of because of their disease to no purpose, since they are not able to remedy it and a doctor causes enough and more than enough harm to the public interest by giving care to those who are already despaired of, since it is for that reason that the Art later may become a matter of ridicule and remedies brought into bad repute to the prejudice of others whose cases are not hopeless, since they can be helped by these same remedies which are applied to hopeless cases in vain, but which they shun believing them to have been useless. Therefore, according to what has been said previously, since those who are afflicted with the plague are despaired of because of the ferocity and malignancy of the disease, a physician should not be compelled to offer help to them.

18, 19 , 20

Third. No-one who is in personal, present and certain danger of life is obligated to look out for the well being of another, since out of loving concern for their own body each person is bound to safeguard their own health rather than that of another person and although it is also considered a work of charity to care for the health of another, yet it is an even greater duty to care for one's own health. When a physician cares for those infected with the plague, he exposes his own safety to a clear and present danger of death: for we see from daily experience that most physicians who, eager for gain, undertake to care for those infected with pestilential diseases assuredly perish and we had enough and more than enough experience of this during the plague of this past year during which a number of the physicians who were appointed to care for the sick exchanged life for death. Therefore, if anyone merely approaching a place of pestilence is said to be testing God, according to Ripa, Mascardus and others, as I said *lib. 3. titul. 3. quaestione 1. numero 8*, by reason of the fact that any one approaching such a place exposes himself to danger of death very easily and without doubt, how much more we should maintain that a physician who commits himself to caring for, to touching and to observing those patients who are infected with the plague and to receiving their dying breath tests God and exposes himself to certain danger of death. And so out of zealous concern for his own health a physician is not bound to assist those infected with the plague and thus he cannot be compelled to do this by anyone else.

21, 22

Finally, if a physician who is not employed by the state can never be compelled to give care, Carrar. *de Med. part. 2. number 91*, even less can he be compelled to do so

in a time of plague, since he cannot do so without fear and evident danger to his own well-being, as has previously been said; indeed, if a physician, even one in the service of the state, cannot be bound to give care in extraordinary cases and is not bound to give care in a time of pestilence, as according to Corneus. *ibid.*, Carrar. says *loc. cit. part. 3. num. 60.*, surely a physician not in the public service should be even less bound to give care in that same time of plague?

Indeed this can certainly be demonstrated to be true from two notable examples. The first is that of Galen, a most distinguished man of medicine, who withdrew to his native city when there was a most virulent pestilence in the City [Rome] in order not to help those infected with the plague, as he says himself, *lib. de libr. propr. cap. 2*. Another example even more pertinent to our argument is that of Hieronymus Frascatorius, a doctor second to none. As reported by Petro Sforzia Pallavicin. *lib. 9. Histor. Conci. cap 13, part 1*, when Frascatorius, because of his celebrated reputation, was elected by the fathers of the Council as physician to the Council of Trent at a time when the council was in session and when the plague was beginning to spread, he obtained permission to depart, stating that he was under no obligation because of the virulence of the plague, even though he had been employed to give his services as a physician.

23.... Moreover, for the sake of bringing to light the truth of the matter, moved by the love of truth no less than by the support of physicians, I undertook this duty to try to examine the question to the best of my ability and there are some things I have had to presume. First. To speak plainly, it must be presumed that a physician can never under any circumstances be compelled to give care since by assuming doctoral insignia and swearing the oath which he takes upon himself, he binds himself to give care with no

obligation; for the obligation which arises to give care to paupers gratis and to urge the sick to undertake the sacrament of penance does not oblige him to give care but to give care to paupers gratis whenever he assists them, just as he binds himself to encourage the sick to take the sacrament of confession whenever he gives them care. Thus in plain words no obligation compels him to give care.

24.

Second. A precept taken from a similar one can make the same argument. A physician is not unreservedly bound to assist a pauper, but only to give care when there is no other doctor able to give help, Navarr. *in Manual. cap. 25. num. 64*, according to physicians, Codronch. *de Christ. med. rat. lib. 1 cap. 33*: if, therefore, there are other physicians available, a physician is not bound to help a pauper who is placed in greater need than others living in the same place, much less will he be bound to assist when there are other doctors; thus he cannot be bound to give care by a judge and even less so by a bishop and this opinion ought to be observed in practice, for I do not know, nor have I ever heard, that a doctor has been compelled to give care against his will by either judge or bishop.

25.

Third. It must be stated that when there is not a sufficient supply of physicians, a physician can be bound and compelled to give care. In my judgement, this is not only true if we are speaking about the sick who are suffering from severe diseases, but even if we are speaking about the sick who do not suffer serious illness. In the first case the matter is clear from those arguments which were brought forward earlier, *num. 3* and following. In the second instance there must be a distinction made as to whether an

illness, although initially mild in nature, can become so serious that it places a person in mortal danger, and this outcome can reasonably be feared, since some diseases naturally progress in this way; and then I say that a physician is to be bound and compelled give care, since it comes to the same thing not to succour a person who is placed in immediate danger of death and not to give care to a person who, although perhaps not in immediate danger, yet reasonably can be threatened by this same mortal danger; indeed, since it is easier to save a sick person from danger while the danger is remote than to remove him from the danger when he is overwhelmed by it, a physician will err much more seriously by neglecting the first than the second and he who takes precautions against danger before it falls upon him acts more prudently than if he delivers himself from danger which he could have prevented; for he who loves danger will perish from it. Thus, for example, if you can cure a patient afflicted with a mild quinsy by an easy and quick letting of the blood and yet you refuse to care for him, the stricken abscess will become so enlarged that afterwards it cannot be helped by any means and will suffocate the patient; and if you neglect to care for a person suffering from a simple tertian ague [a form of malaria especially one which occurs in the Autumn], it can progress to occurring every second day from an intermittent fever and from every second day to a continuous and malign fever and although in the beginning you could have restored his health without difficulty, you will see that the patient has been placed in danger of death and finally be taken by death. However, when an illness is mild and not dangerous, a doctor will not be under any obligation since all danger to the safety of a patient is absent.

26.

Fourth. It must be put forward that in extraordinary cases, as in the case of the plague, when no other doctor is present to give care to the sick, a physician can be compelled to give care even though he is not employed by the state, since when public safety is endangered, a doctor who is able to help and refuses to care for the sick becomes guilty of the deaths of all those who died uncared for, according to the judgements which were put forward in section 3 and following.

27.

....Nor in my judgement is there anything compelling in the assertion, *Carrar. de Medic. part. 3 num. 60*,. that a physician who has been employed is certainly not bound, nor can he be obliged to give care to those suffering from the plague on the grounds that he is not appointed to give care in extraordinary cases: I see that this opinion has also persuaded others since when a physician is employed, he does not accept extraordinary cases (as he should be bound to do), nor is it recommended either tacitly or in the open letters which are customarily released for doctors engaged by the state that he ought accept them; this very exception is always found and yet where this exception is due to take effect though an appointment by lottery, there ought to have been some mention of it somewhere: although it in no way exists, such an exception ought to give no support for a physician who is employed, unless we consider customary practice overcomes this difficulty.

Yet it can increase the difficulty that when this exception ought to have a place in respect to extraordinary cases, it would be necessary to describe which cases these are

and which cases ought to be considered extraordinary: for the plague is not the only such case, but other diseases are also given which are no less uncommon than even the plague, as is, for example, leprosy or especially elephantiasis, scurvy, cancers, aneurysms and other diseases, clearly epidemic, some of which are as rare as the plague itself. But since diseases of this kind are not common and do not infect many people but only a very few, the difficulty gives way in this case. Therefore, I have considered that a doctor who has been employed is bound to give care in all cases, even if when he is engaged he excepts extraordinary cases, especially the plague.

I believe this position to hold the truth and especially to respect justice, which, as is stated in the opinion of the jurists, ought to be a consideration not only for a physician who has been employed, but also for any other public servants.

28, 29, 30.

Fifth. It ought to be put forward that when there are several doctors in a location where the plague is very active and not one of them is willing to care for those infected with the plague, no matter what reward is offered, the matter ought to be settled by chance and the person on whom the lot has fallen should be able to be compelled to give care; otherwise, with the sick succumbing without any help, all doctors become guilty of the deaths of those who perish. However, it seems that a contrary opinion can be put forward maintaining that just as when several persons have wounded or killed a man and none of them is condemned to any ordinary penalty but to an extraordinary one, on the grounds that no one of them is guilty of homicide, for cases concerning this see Julius Clarus *Homicid. num. 3. libr. 52. sentent.*, the same ought also to be maintained of physicians who all together refuse to give care to those sick with the plague so that

no one of them is held guilty in respect to the deaths of those who are sick; yet it must be said that the proposition is different, since not always and not in every case is the conclusion confirmed regarding the number persons injuring and killing someone, but only in a case where it is not established which one of those committing the injury has killed him, whence not all are equally guilty and lest the less guilty be condemned, all are condemned to extraordinary punishment; but in our case all are equally to blame and all are equal in doing harm, whence all should receive punishment and be punished as if guilty of homicide since, although they were able to do so, they refused to save with medical help men placed in extreme danger of losing their lives.

Nor ought it to be put forward in defence of these men that even if the sick had been tended by them, yet they would have perished because of the extreme virulence and malignancy of the disease, since it is not necessary, nor does it always happen that all those infected with the plague die, howsoever cruel and malignant the disease may be, and it is enough to include in blame the doctors refusing to give care if even the smallest number of sick could have been saved if they had been given care.

31.

Sixth. If this is the case, it ought to be put forward that, as the plague flourishes without contact,(as I have already shown can happen (*libro tertio harum quaest. tit. 13 quaest. num. 21 and following*)), any physician can be compelled to give care, even though he may not be employed by the state, provided that there is no other physician in place to give care, just as I said that physicians are bound to give care in the case of any other diseases with no difference observed between one case and another: for if a physician who refuses to care for those detained because of infectious pestilence can

be excused in respect to one circumstance on account of which there would be a present danger of being taken by the same pestilence and of his endangering life, yet this consideration does not exist in a non contagious pestilence. Therefore, in these same circumstances in which a doctor can be compelled to give care for other diseases, he can also be compelled to give care in the case of a pestilence which is not contagious.

32.

Seventh. It must be put forward that although a doctor can be compelled to give care in the previously mentioned cases, he should never be compelled to live in the same place with those who have been infected with the plague and in the place where these patients are detained: for the doctors are deemed burdened enough and more than enough and to be very fully satisfying their duty if they have visited the sick twice, or at the very least once, each day and in any case no law or reason obliges them to go beyond their customary manner of visiting; and so it should be judged as a faulty decision resulting in the deaths of the doctors themselves and clear harm to the public good when doctors are compelled to live in the very same place where those infected with the plague are detained, for very soon they themselves are infected and die, so that other doctors absolutely refuse to serve and those who are present every day are compelled to substitute new physicians to give care: thus when an outbreak of the plague is of long duration, it may easily happen that all succumb to the plague.

Therefore, after their daily visit to the sick, it is judged far more humane and just to allow physicians to look out for themselves by taking themselves home to a place less infected, while still living separately from the healthy and persons not exposed to the disease, and in the meantime they should fortify themselves against the virulence of the

contagion by every means so that they may remain strong and able to serve those infected better and more freely and without fear, otherwise, as recent experience has shown, by living with the infected they die very easily and in dying they present a greater responsibility to those who ought to care for the well being of doctors, and meanwhile the blameless doctors compelled to live in the pest house are destined to die.

33.

Eighth. It must be put forward that in a time of plague, a doctor can serve by providing a substitute whenever he is compelled to give care separate from that service for which he had been hired; whereas, if he had been employed for this duty especially, namely to care for those infected with the plague, he himself is bound to serve, since the duty is considered to have been one for which the person himself had been hired and for which the service of a substitute is not thought to be equal. But when a doctor is not hired specifically for this duty, he is not bound to serve in person but can be allowed to serve through a substitute, because if a doctor is not bound to give service in a case of necessity and when other doctors exist who can do the same service, much more is he considered to be released from the obligation of serving in his own person, provided that he serves through substitute to whom he gives satisfactory recompense, and so we see this observed at present here in the City and elsewhere in cases of this kind of pestilence.

34.

Ninth. It should be set out that a doctor can never be compelled to give care without a due stipend, an appropriate reward, except in the case of a poor man and where there

is none to pay recompense on behalf of the poor man, as was stated earlier according to Navarra. This conclusion ought to be amplified so that no physician, even though employed, can be compelled to give care in a time of plague for his customary and agreed salary which ought to be suitably increased, as I said above according to Corneus.

35.

And from these instances it can be understood what answer ought to be made to the opposing arguments on both sides: first, to what was said in defence of the affirmative, that a doctor can be bound and compelled to give service, since the duty of care is a public service which anyone, even one unwilling, is bound to undertake, it should be responded that public duties are of two different kinds, for some have a binding obligation to carry out the concomitant duties in person, as, for example, in the case of a bishop, parish priest, soldier and others, as well as a physician employed by the state; other duties do not have this obligation attached to the performance of the responsibilities, but they only consign the position and ability to perform the duties to whatever person it is agreeable or whatever the occasion or necessity has brought the duty to him. In the former case, as with a bishop or parish priest, or soldier or a physician employed by the state, it must be stated that a person can be compelled to perform the duty even against their will, in the latter case they cannot be compelled unless there is an urgent necessity; such necessity occurs in the case of persons who need the help of someone in the public service and from the lack of another who could offer the same service for the public good; one may give as an example a parish priest who is not bound to administer the sacraments outside his parish and yet, in a case of

necessity and by default or the absence of the proper parish priest, can be compelled to perform the office of a parish priest outside his own parish; for in a case of necessity not only can the priest of another parish be compelled to serve, but even a cleric can administer the sacraments in a time of virulent plague. If any priest can hear confession or absolve the excommunicate at such a time, how much more fair and appropriate is it to be able to compel a parish priest to perform this duty, even though it may be outside his own parish? Ripa demonstrates this in a stronger case, *in tract. de Peste part. 2. partic. 3. num. 146*. But who has said that a doctor of law can be compelled at any time to assume the advocacy of any case when there is no necessity, no lack of another who could assume advocacy of this kind? Equally this must be said of a physician who, although he has received the distinction of a doctorate, yet has a public appointment, that he does not have a resulting obligation to practise his profession unless he is present in a situation of urgent public necessity, as the case of the Jurists also confirms.

36.

In the same way it must be said that in dangerous circumstances a physician cannot be bound to give care to anyone who is ill when there is a supply of other physicians, but can only be obliged to do so when there is no other doctor to assume care, for then he will consider it true that he is bound to give care by legal precept, otherwise he will commit mortal sin; and thus he can be compelled to give service by a bishop that he may cease from sin, as Ripa said, and he can also be compelled by a judge, as Ripa added, and in summary, the only physician who remains in any place is obliged by the

law of charity and from precept to give care to any person whose life is in danger, even if that person is infected with the plague.

37.

Nor is there an objection on the grounds that the obligation arising from love of one's own body, on account of which one is bound to care for one's own health first, is greater than the obligation arising from love for the well-being of one's neighbour, since the interests of public safety must most certainly be placed first before concern for individual health, and thus, in a time of plague, even with present danger to his own health, a physician is deemed to be obliged to give care to the sick detained by the plague when no other doctor is present who can assist them in this emergency.

38.

Nor should we be satisfied by another response to the third argument brought forward in public debate for the affirmative, if it can indeed be elicited without reservation, that a physician causes the death of a man who cannot be cured by any other physician, nor saved by another person except himself and with his help; but when on that account a physician has neglected or even refused to care for a patient whose life is in danger, because he can be given care by another doctor and be delivered from danger of death, he can in no way be bound to offer assistance to such a sick person, as I gave as an example in respect to the poor and confirmed on the authority of Navarro and others.

39.

Further, to the fourth argument for the affirmative, the response is that it is not everywhere accepted and concluded to be true that a doctor may be bound to give care

even to the unwilling and that this conclusion has been proposed by experts in Canon Law and by very many doctors on the grounds that no benefit is conferred on an unwilling recipient, *I Invito, Digestis. de reg. iur.*, and on the grounds that by sacred scripture we are admonished to ask that we may receive; therefore, in my opinion, Roderico a Castr. well advises, *lib. 3. Med. Polit. cap. 14*, that a physician need not approach those who are ill unless they ask.

And indeed how will a physician care for an unwilling person? Surely the utmost obedience of the patient himself is required for proper care? Surely the great teacher Hippocrates mentioned this particularly, *lib. 1 Aphor.*; moreover, he who is cared for unwillingly will in no way be persuaded to show himself obedient to his physician, rather he will do everything wrong and act against the orders of his physician; whatever the physician attempts for his health, he will destroy with his disobedience and will render useless. And assuredly I have wondered how the experts in Canon Law have ventured so far in regard to this question, as they have certainly made clear that they are not sufficiently instructed in the complexity of the Art and in those skills which are most necessary in caring for the sick. Yet since they are notable for their zeal except in this respect, one must wonder much more about some physicians who adhere to such an inflexible that they determine that one must proceed piously and with Christian charity in this matter; certainly they ought to be charged with being afflicted with excessive rigour except in cases where the sick were mad and because of this they refused the help of a doctor.

40.

Finally, it must be said in favour of the affirmative opinion that because of the privileges and exemptions granted to him and in which he rejoices, a physician is indeed bound to give care in the existing conditions about which we have spoken and it is enough and more than enough if, in the urgent necessity for public safety, he persists and he undertakes care of whatever is necessary at the time and is not seen to argue differently when there are no other doctors available who can offer help in this emergency, but it is in his hands alone to bring help. Therefore, provided that in the above mentioned urgent necessity a doctor has shown himself ready to bring aid to those who have been placed in this necessity, he has sufficiently satisfied his duty and rightly is able to enjoy the privileges and exemptions arising from his position as a physician.

But the response to the arguments in favour of the negative position can be forcefully made in one and the same order which we have used in satisfying the arguments set out in favour of the affirmative.

41-42.

First, it must be said that it is fitting that the services of a free Art also should be free, but necessity does not consider the law, *cap. sicut non alii de consecrat. distinct. 1*, and therefore nothing which happens because of a need so urgent that even free craftsmen can be compelled to offer their service without any prejudice to their freedom takes away from the freedom of the Art, since if necessity does not consider the law, it is not bound by usual practice. *l 1ff de off. Consul.*; thus the interest of public safety outweighs the exception brought forward to the contrary, indeed not only the interest of public

safety, but even the interest of the safety of a particular person on account of the urgent necessity, since, although it may be conceded that a doctor is strictly bound by no obligation to give care, yet when the safety of a neighbour is in danger, he is obliged to help at least by the law of Charity, which is much more binding than any obligation, and the exception which proceeds from this dissolves away all opposition.

43.

To the second, it must be said that the proposition that a doctor is not bound to undertake the care of an incurable disease simply is not true because the sick should never be despaired of and even placed in a situation of ultimate desperation where a doctor declares such and such a disease is incurable, for it is agreed that by undertaking the care of a disease of this kind a doctor does injury to no one and in this way he satisfies the precepts of the Art.

44.

Nor is what can be said against the earlier assertion, namely that the work of a physician in caring for incurable diseases is completely deceptive and therefore it is better that they not undertake this care, an objection since the work of a doctor in caring for diseases of this kind is absolutely not deceptive when one considers that with a suitable diet, by the prescription of some gentle remedies and by palliative care, as they say, and by assiduous care for the comfort of the patient, a physician can mitigate the disease and sometimes put off death itself for a long time. In addition, it is not true that the plague is an incurable disease, but only very obstinate, pernicious and deadly, since many more sick perish than are saved from it, although, from the other point of view, even so some are saved.

Nor is it true that the plague is a disease inflicted by God, for although it may be agreed that sometimes the plague is sent by God, as both sacred and profane histories bear witness, and at times it appears because of the inexpiable crimes of men, yet very often it progresses in a natural course and has its origin in a natural cause and although, as has been said, very many men die because of their own great evil, yet sometimes the disease is overcome by natural remedies. Likewise it must certainly be said that a physician should not undertake the care of those who have succumbed to sickness and have already been despaired of, yet it is not true that those taken by the plague have been despaired of since we may try to save some of them with appropriate remedies and deliver them from an immediate death.

45.

To the third point it must be said that although a physician places his own health in danger by giving care to those infected with the plague, this does not excuse him from giving care, since he is bound to do so in the interest of public safety, for the sake of which individual safety is put aside; besides with his many informed precautions, a physician can look after himself while he is giving care so that he does not incur any harm to his health. All practising physicians are sufficiently familiar with these precautions and if he puts them into use with due caution, he can safeguard himself with his own diligence. Experience teaches that those physicians who act prudently, observe moderation in their diet and carefully and moderately protect themselves with suitable precautions free not only themselves but some of their patients from the threat of plague and death. On the contrary it must be said that those physicians are at risk who have lived without moderation, have used either no remedies or more of a remedy

than was needed or unsuitable remedies, swilling them down incautiously without method or measurement, or have approached too close when visiting patients, for these physicians clearly have been punished through their own fault.

Therefore, even if it cannot be denied that to give care to those infected with the plague is certainly to place oneself in danger of death, yet since this is not a situation in which physician can avoid such danger and the situation occurs because it happens to serve the interests of public safety, a physician can be compelled to give care when no other doctor is available who can offer his aid in the circumstances.

46.

Finally, it must be responded that although it may be true that an independent physician cannot be compelled to give care, yet necessity imposes an obligation even for a physician who is not under any other obligation; such necessity emerges, as has been stated, from the imminent danger to the lives of those who are ill and from the absence or lack of another doctor to give help, circumstances which are especially urgent in a time of plague.

And to those examples brought forward concerning Galen and Frascatorius, who both left a city infected with plague, it must rightly be said that it was possible for both to care for themselves by fleeing the city since both in Rome and in Trent there was no lack of a number of other doctors to give care to those infected by the plague; moreover, although Frascatorius had been employed by the Council, he was able to leave since he was not under contract for cases of plague, according to the common opinion of the Jurists, although he himself thought the opposite, *num. 28 above*.

47.

And so from these arguments which I have collected together, it must be stated that an independent doctor, one who has not been employed, cannot be compelled to give care except when no one else in the place or city in which he lives can be found to give care to the the sick who are placed danger of death and especially to those suffering from the plague; for in this case the truth is that even a doctor who has never practised medicine but only received his doctorate and pursued gold instead, indeed even one who is undertaking the study of medicine so that he may practise in time can likewise be compelled by a shortage of other doctors and by the necessity of the public interest.

Moreover, the understanding, which applies to both the independent physician and the one employed, that a physician cannot be compelled except by debt or a fitting honorarium or an increase in his usual reward should not be overturned.

48.

As a corollary, moreover, it should be added that these same circumstances have much more pertinence in respect to persons who in a wider sense are included under the name of physician, as are surgeons, barbers, apothecaries, dealers in unguents midwives and others of this kind; for all these individually can be compelled to offer help in urgent necessity just as is the case for true physicians. But why, I ask, are these duties only required of physicians? Certainly any person whatsoever in a situation of urgent necessity is obligated to offer their help for the public good.

49.

However, it should not be omitted that physicians should not be compelled by force to give service against their will because great harm to the sick can come from such use of

force, see *Ambros. Paraeus lib. 21. sua Chirurg. cap. 11*. Therefore, instead they ought to be convinced with persuasive words, not by the offer of a reward which should be despised, and urged in the name of the Lord to undertake the task themselves and to give their care freely as pious works and for love of Christian charity, to claim a worthy reward not only from an earthly prince but from God himself, the giver of all good things; for certainly it must be considered wrongly done when doctors are marked down to give care to those infected with the plague as if they were defendants condemned to punishment and driven with great violence by guards to places where those infected with plague are detained and compelled to remain there to give care against their will with their spirits perturbed by fear of death and by the violence and injury they have suffered. But if after being tempted by gentle and sweet exhortations they refuse to obey, then their fault requires they may be compelled by whatever means.

50.

Moreover, physicians should be reminded that even if they endure danger to their own lives by giving care to those suffering from the plague, they should not be so afraid to practise Christian charity, but entrust themselves willingly to the hands of God and their hope in Him. For He in whose hands are life and death and who alone cares for the helpless will preserve them from imminent peril, as we know He has done for others who, by the mercy God has shown to them, did not refrain from giving care to those sick detained by the plague, not only by giving care to them but by touching them and whatever pertained to their care, by observing with their own eyes and senses as Ludovic. Septal. says of himself, *libro de Peste*, a man, as doctors know, worthy of every praise and of excellent merit in matters of medicine; for here in Milan, when he

was besieged by plague for the third time in his life, he undertook care of those ill with the plague and with the help of God always kept himself safe from harm.