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CLINICAL ETHICS DILEMMAS IN THEORY AND PRACTICE

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SUMMARY – Along with daily problems that medical doctors face on working in medical services, they often wonder whether all of the patient's rights have been respected during treatment and rehabilitation. Consequently, a neurologist is reassessing his decisions on therapy and rehabilitation prescribed. Medical ethics is based on Hippocratic Oath as the original source of all medical codes, which implies that it is honorable duty of every medical doctor to devote his life orientation and profession to the health of human beings. While working, medical doctor holds up to his conscience that has been sculptured during upbringing, education and professional development. The practice of medicine is not just a professionally performed work but a calling with a firm moral basis that respects all human rights and dignity of the patient.

Key words: *Ethics – clinical; Ethics – institutional; Codes of ethics; Legislation and jurisprudence; Interprofessional relations*

Introduction

Medical ethics implies identification of morally correct actions and solving of ethical dilemmas in medical decision making by use of moral principles and rules in a particular medical case. Ethics in medicine has developed over time, thus yielding various branches and directions of this primarily philosophical discipline, all of them aiming at better patient care. Clinical ethics deals with identification, analysis and solving of moral problems that may occur during patient care. According to some authors, clinical ethics refers to ethical education of medical students, interns, residents, clinicians and professors, performed in the point-of-care (POC) setting.

According to the World Health Organization (WHO) definition, new medical ethics, biomedical ethics or bioethics is an interdisciplinary field of systematic study of ethical problems that may occur in the research, medicine and social environment.

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Clinical bioethics refers to ethics in clinical practice and ethical problems that emerge in patient care; clinical bioethics deals with theoretical debate on various models of ethical decision making in practice.

Bioethics is a systematic study of moral dimensions including moral viewpoints, decisions, behavior and action within the scope of natural sciences and healthcare, thereby using various ethical methodologies in the interdisciplinary setting[1].

In conclusion, all those writing about clinical ethics or taking part in its practice actually belong to a wide interdisciplinary field of bioethics.

Clinical evaluation implies a set of values and standards. Induced abortion, euthanasia, organ transplantation, refusal of blood transfusion by Jehovah's Witnesses, gene therapy or cloning related dilemmas require ethical and other assessments that reach beyond the frame of medical values. The ever growing gap between the possible and available therapeutic procedures has resulted in the physician's work being influenced by economic and political issues that interfere with the physician's autonomy. The codes of medical ethics and deontology regulate the rights of patients and liabilities and responsibilities of physicians. According to the Act

on Medical Service (Article 4, Subsection 2), the physician is obliged to respect the principles of medical service and restrain from any activity that is inconsistent with the reputation, dignity and independence of medical profession, and may turn to conscientious objection in line with legal provisions, code of medical ethics and deontology[2].

Hospital management and healthcare resources are liable to significant financial restrictions of healthcare funds, and the cost and benefit doctrine is suggested to physicians in particular cases[3]. According to this doctrine, treatment should occasionally be denied to patients with poor prognosis by a decision made by a physician and ethics committee. Some ethicists argue against such practice, considering that exclusively the physician and the respective specialist consultation are competent to make all decisions on the medically indicated procedure since some members of the ethics committees are not qualified to make professional decisions. The cost and benefit rule is applied in patients where a favorable prognosis and thus cost effectiveness of the resources invested has been predicted, younger patients in particular. Cost effectiveness as the only substantial determinant of this doctrine makes the treatment inhumane and unethical, and is in sharp contrast to the fundamental principles of medical profession established as early as the Hippocratic Oath.

Ethics in Medicine: from Hippocrates to Pellegrino and Thomasma

Historical development of ethics in medicine

During history, ethical codes appeared in the form of prayers, oaths, beliefs, institutional directives and statements. They represent a very personalized commitment and oblige in public the one swearing-in to certain duties and responsibilities[4].

One of the oldest oaths, *Charaka Samhita*, has been taken over from Indian Ayurveda. However, it was "as late as" ancient Greece that had bequeathed an ethical cornerstone to medicine. At the time of the greatest civilization rise (4th century B.C.), the Greek used to address the god Aesculapius for cure. At that time, Hippocrates emerged stating that every illness had its origin in some natural causes. Working at a medical school on the Aegean Island of Kos, he introduced a number of novelties: he was the first physician that considered medicine as a science separate from religion; he introduced the patient's right to confidentiality of medical data; and suggested the physicians to make records of their observations for other fellow physicians to make use of it.

Hippocratic Oath is now considered as a unique high-quality model of ethical reasoning in medical profession. All subsequent medical ethics codes and declarations are based on Hippocratic Oath. It has been speculated that it was not written by Hippocrates himself but by some of his disciples; however, this does not take away any of its value and reliability at all. As early as the Middle Ages some academic institutions introduced a customary practice for the new members to confirm their membership by a version of Hippocratic Oath. From the Renaissance through the Enlightenment, the physicians in Europe as well as in the New World demonstrated their commitment to the moral principles of medicine by taking an oath. So, for example, as early as the 19th century members of the New York State Medical Association had to sign an oath on admission ceremony.

Hippocratic Oath had undergone modifications with time, which culminated in the Geneva Oath adopted at the Congress of the International Association of Medical Societies in Geneva 1948, in response to the cruelties committed during World War II in Nazi concentration camps.

Thomas Percival (1740-1804) was the pioneer of ethical code for physicians, proposed in his paper published in 1794 and elaborated in his book Medical Ethics, published in 1803. Then the terms "professional ethics" and "medical ethics" were coined. His proposal of ethical code was met with powerful response in the USA, where it was adopted by the Boston Medical Society in 1808. In 1847, the newly established American Medical Association adopted Percival's Code of Ethics, so it was the first ethical code accepted by a national society and also the first one ever named code of ethics. It was the first successful attempt at introducing a system of individual moral assessment by a physician[5].

Modern ethicists Edmund Pellegrino and David Thomasma consider concern for the patient welfare as the main objective of medical practice and primary basis of an ethical relationship between the physician and the patient[6]. They believe that the systems of ethical theories to steer the physicians on making decisions would be unnecessary had all the physicians possessed ideal virtues and made medical decisions based on a behavior relying on these virtues. The ethics based on virtues dates back to Plato and Aristotle, who advocated fostering true virtues that entailed good life. The virtues upon which the work of a physician should rely in-

clude trust, empathy, *pronesia* (intuitive voice of common sense to make appropriate decisions), equity, courage as well as moderateness, integrity and self-criticism. Therefore, medicine is a fundamentally moral science, and physicians have an obliging duty to always take correct steps for the benefit of the patient. In 1988, Pellegrino and Thomasma launched their version of medical oath based on Hippocratic Oath while also corresponding to the needs of modern medicine, its dilemmas and progress. In brief, the new oath differed from the traditional one in obliging the physician to the following:

1. professional training as a must to improve their skills and knowledge;
2. care of each individual patient irrespective of his (in)ability to pay for the service;
3. acting for the patient's interest, not for any interests;
4. specific approach to the patient, with due respect for his will, and communicating with the patient using simple and understandable terms;
5. assisting the patient to die in accordance with his own life principles; and
6. taking part in political decisions that influence health of the population at large.

International documents on patient rights

At the beginning of the 20th century, codes became the predominant form of professional ethics in the USA. Nowadays, formal code of ethics is a trademark of professionalism. The International Code of Medical Ethics issued by the International Medical Association in 1949 was an attempt at developing international standards and summing up the most important principles of medical ethics. The European Declaration on the Promotion of Patient Rights was issued in Amsterdam in 1994 as a conclusion of the Conference on Patient Rights, held under the auspices of the WHO Regional Office for Europe. The Declaration consists of six basic determinants regulating patient rights with explanation in detail. The Declaration pays due attention to human rights and values in healthcare, information on the patient health status and medical procedures proposed, diagnosis, prediction and progress of treatment, patient informed consent, confidentiality and privacy of medical records, and healthcare corresponding to the health, cultural and other needs of the patient. If the patient considers his rights have been violated, he is entitled to lodge a complaint.

The World Medical Association adopted Declaration on the Rights of the Patient in 1981 (Lisbon) and 1995 (Bali)[7]. In this Declaration, the great responsibility of physicians and all other medical workers in respecting and protecting patient rights is emphasized. The European Convention on Human Rights and Biomedicine, held in Oviedo in 1997, was the first comprehensive multilateral agreement on biomedical human rights.

The Helsinki Declaration of the World Medical Association, first issued in 1964 and its last revision from Edinburgh 2000 deals with ethical principles in human trials[8]. Starting from the assumption that care for patient health is the first and foremost concern of the physician, he will do anything to preserve it. On performing studies in humans, the prophylactic, diagnostic and therapeutic procedures as well as the understanding of the etiology and pathogenesis of the disease should be improved. Helsinki Declaration defines the study protocol in detail, from the application to the ethics committee through full agreement with the national legal provisions.

Basic Ethical Principles and Clinical Ethics Dilemmas in the Physician to Patient Relationship

The physician should have an opportunity to familiarize with ethical issues during the process of education, to be able to face and solve ethical dilemmas encountered in daily practice. In this way, he develops his feeling for right action in a given situation[9].

In medical practice, various ethical models and recommendations on the modalities of patient care have been developed. According to Wertz and Fletcher, patient care implies a situation based approach in an attempt to do the best for people in special context, with due concern of the client's needs and focusing on the professional's responsibility[10]. According to Beauchamp and Childress, specific rules on healthcare and research ethics can be classified into four groups of principles: beneficence, doing no harm, respect for autonomy, and equity. In addition, the following secondary principles are derived from these four basic ethical principles: truthfulness, loyalty, privacy and confidentiality, whereby these categories originate from professional roles and tradition[11].

Veatch thinks that bioethics has reduced the scope of action of modern medicine. The issues of artificial abortion or euthanasia definitely require ethical and other evaluations that are beyond the frame of the strictly

medical values[9]. Furthermore, he thinks that someone competent in medicine need not necessarily know what to do in each individual medical case. Therefore, modern medicine will be substituted by post-modern medicine based on the presumption that any form of communication and decision making requires a set of beliefs and values that have to be imported from the world beyond medicine itself. This will consequentially induce radical changes also in bioethics. This theoretician's reasoning follows the lines of the analyzed oath issued by Pellegrino and Thomasma. In contrast to Beauchamp and Childress, Veatch depicts six principles: beneficence, maintaining contact, autonomy, honesty, nonkilling, and equity. Hugo Tristan Engelhardt Jr. considers there are only two primary principles: autonomy and beneficence, with all others being derived from these two[12].

Chadwick thinks that besides care, casuistics is the one that renounces the efficiency of implementing abstract theories in patient care. Casuistics creates principles through consideration of specific cases. Like in common law, a decision made in a particular case will set a precedent for some substantially similar cases in the future. Therefore, both the casuistics and care are focused on the interaction between the professional and the patient or client because every patient is a unique entity to which a case from previous practice cannot be extrapolated.

In clinical practice, the physician adheres to his conscience that has been shaped by his upbringing, education and professional growth. Furthermore, the physician has the option of conscientious objection at disposal if he is asked to do something opposing his beliefs. Professional ethics consists of a set of liabilities the physician owes to the patient and the society because he has been entitled by the society to take care of the health of the population at large.

It is of utmost importance to think of ethics as a source of confrontation with moral dilemmas emerging in practice. In the past, the traditional medical study offered the physician-to-be integral professional and humanist-ethical education; thus, he was able to cope with almost all ethical issues related to his patients; then, medicine had less impact on the natural course of disease, pregnancy, etc., because of the substantially less knowledge available. At that time, clinical death and biologic death were the same. Nowadays, however, the situation is quite different. The new diagnostic methods, treatment modalities, instruments, drugs, etc. enable full recovery or considerable prolongation of life expectancy in many patients, with a more or less satisfactory outcome and quality of life. Yet, in spite of all efforts, unsatisfactory therapeutic outcome may occasionally be expected in severely ill patients; in such cases, doubts arise about justifiability of long-term aggressive therapy. The patients' families are emotionally and frequently financially exhausted, while the physician feels helpless and unsuccessful in spite of all the efforts invested.

In order to act properly in his care of the severely ill patient, the physician should always bear in mind the following facts: on treatment initiation, it is frequently hard to predict the outcome with certainty, and such a prognosis may occasionally prove uncertain and inaccurate; a great proportion of life-threatened patients can currently be successfully treated with the use of aggressive intensive care methods, then adjusting for their future social life; and individual decision making based on the prediction of poor prognosis and denial of care for the severely ill patient would entail differences in the procedures from department to department and thus discrimination among the same types of patients.

The above mentioned ethical code of the American Medical Association emphasizes the physician's responsibility toward the patient and the importance of the universal accessibility to treatment. In the 1980s, the term of clinical ethics started to be used at some American postgraduate *curricula* and in the literature, a term not referred to before in the movement of bioethics, although clinicians used to mention it before when discussing various ethical procedures. Then, it was gradually realized that the physician must frequently act ethically according to the given situation rather than ethical rules, i.e. in clinical ethics, the decision on what to do varies from case to case. Like many other sciences, medicine and sociology frequently wonder what stand to take considering the issues of life and death. The life of the individual is regulated by the Declaration on Human Rights, emphasizing that "… dignity is the basis of freedom of all members of the human society and nobody can be submitted to torture"[10,13]. Accordingly, if there is the right to live, then there must also be the right to dye[14]. Sociologic approach defines social behavior and determines acceptable social standards concerning the issues of life and death. In the last decade, the process of decision making in terminal stages of life includes physicians, family members and patients when possible. Mental suffering of the patient and family

members tends to be minimized, and the issues of therapy discontinuation or diagnostic procedure denial are jointly considered.

According to Balint, it is appropriate not to employ invasive or intensive life sustaining procedures in terminal stage if it is in line with the patient's wish[15]. In the last two to three decades, an ever greater number of societies have been established all over the world, which use a very aggressive approach trying to legalize euthanasia in the form of movement for euthanasia. In The Netherlands, euthanasia was legalized in 2001 for extreme circumstances. Based on all these facts, it is concluded that the healthcare system, healthcare professionals and patients as well as the society as a whole have a substantial responsibility to stop further dehumanization of medicine and to solve bioethics dilemmas in clinical practice through education and due competence of all healthcare team members involved in patient management. The physician's job does not only imply professional performance; the more so, it is a profession with a firm moral basis, respecting all human rights and patient dignity.

Issues of Medical Ethics in Croatia – Legal and Professional Regulations

Medical ethics and deontology in Croatia

In 1990, the Croatian Medical Association (CMA) assembly approved establishment of the Commission for Human Rights and Medical Ethics, and in 1993 adopted the Code of Medical Ethics and Deontology, which for the first time included some elements of the informed consent. Upon foundation of the Croatian Medical Chamber (CMC) in 1996, the Commission for Medical Ethics and Deontology common to CMC and CMA was established. Later on, CMC instituted an independent Commission for Medical Ethics and Deontology. In 2002, an independent commission was also founded by CMA.

On February 23, 2002, CMA adopted the latest Code version, whereas on June 20, 2002, CMC adopted its own Code of Medical Ethics and Deontology. The two codes mostly cover the same topics, i.e. actual ethical duties of physicians concerning basic principles; liabilities toward patient; family planning and human fertility regulation; dying patient; organ and tissue transplantation; biomedical research; human genome; relationship to individuals with restricted freedom and institutionalized individuals; placebo procedure; relationship to other physicians, profession, CMA and CMC; and conclusive provisions. The basic regulations of the CMA Code provide distinct directions on the physician's duties and patient rights[16]:

1. It is the physician's honorable duty to devote his life and career to man's health.
2. In line with this, he will respect human life from the very beginning to death; he will promote health, prevent and treat disease, and respect human body and personality also after death.
3. He will provide help equally to everybody irrespective of age, sex, race, nationality, religious or political belief, social status, with full respect for human rights and dignity of the individual.
4. He will invest all his abilities to cherish the noble tradition of the medical profession by maintaining high standards of the professional work and ethical attitudes to the patient and his relatives as well as to healthy people.
5. In his work, he will take care of the reputation and dignity of the medical profession and treat his fellows honorably.
6. He will always use his skills and knowledge with full responsibility, in accordance with the principles delineated in this Code.
7. Genetic testing and genome modifications can only be performed for healthcare purpose.

Legal provisions

In Article 3 of the Act on Health Care as the umbrella law regulating the status of the patient and the duties of the physician, it is emphasized that every person has the right of healthcare and is entitled to receive any opportunity to achieve the highest possible health level, and nobody can endanger the health of the others[17].

With the Act on Patient Rights, the principle of patient rights has been introduced in the Croatian legislation, thus upgrading the quality of healthcare as a consequence of the protection of human rights and dignity of human beings as applied in medicine[18]. The topic of patient rights is described in detail, with special reference to ethics committees at healthcare institutions and their main task of monitoring the implementation of ethical principles of medical profession, supervising drug and medical product trials, approving scientific research, supervising organ retrieval from the dead upon autopsy, and solving other ethical issues emerging on performing healthcare activities at the institution. Along with

daily problems encountered while working in the health-care system, the physician frequently wonders whether he has provided the patient all the rights he is entitled during the process of treatment and rehabilitation.

Clinical ethics dilemmas are defined as clinical problems where all the potential solutions require violation of some moral rule. Is it correct to continue sickening and aggressive therapy in a helpless dying patient to help him survive, or to discontinue therapy and let him die to prevent further suffering – this is a classic example of a clinical ethics dilemma.

Both solutions can be defended by moral principles; however, both solutions also violate moral rules. The dilemma can only be solved if the individual decides when, why and how it is correct to violate a moral rule, usually invoking a higher moral duty.

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Sažetak

KLINIČKE ETIČKE DVOJBE U TEORIJI I PRAKSI

Ž. Josipović-Jelić i *I. Šoljan*

Uza svakodnevne probleme s kojima se suočava radeći u sustavu zdravstva, liječnik si često postavlja pitanje je li bolesniku tijekom liječenja i rehabilitacije omogućio sva prava koja mu pripadaju. Tako se i neurolog često preispituje je li u svom radu ispravno odlučio o propisanoj terapiji i rehabilitaciji. Medicinska etika se temelji na Hipokratovoj zakletvi – izvorišnoj točki svih medicinskih kodeksa – koja podrazumijeva da je časna dužnost svakog liječnika posvetiti svoju životnu orijentiranost i struku zdravlju čovjeka. U kliničkoj praksi liječnik se pridržava svoje savjesti koja je oblikovana odgojem, naobrazbom i profesionalnim razvojem. Posao liječnika ne podrazumijeva samo profesionalno obavljanje posla, nego je to poziv sa čvrstom moralnom osnovom koji poštuje sva ljudska prava i moralno dostojanstvo bolesnika.

Ključne riječi: *Etika – klinička; Etika – institucijska; Etički kodeksi; Zakonodavstvo i pravosuđe; Međustrukovni odnosi*