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Ethical, juridical and historical aspects of medical confidentiality

ABSTRACT

One of the most traditional principles of medical ethics is Medical Confidentiality, which has its important goal to protect the patient's interest in the framework of the doctor-patient relationship. According to this principle, the information that doctors learn about their patients in the course of their professional practice should not be disclosed to others. Good medical practice depends upon patients being able to discuss openly with the doctor the aspects of their health on the understanding that such details will be kept secret. It follows that any disclosure contrary to the individual's interest is also potentially detrimental to the public interest since it may discourage confiding in the future. In the absence of guarantees that their secrets will be protected, patients may withhold important information about their health care and also about the wellbeing of others etc.

The paper also discusses the different ethical aspects of medical confidentiality, circumstances which permit disclosure, models of truth telling, historical and juridical aspects of medical confidentiality in general and in Albania.

1. Introduction

One of the most traditional principles of medical ethics is Medical Confidentiality. Its major concern is the protection of the patient's interest within the scope of the doctor-patient relationship. According to this principle, the information that doctors learn about their patients in the course of their professional practice should not be disclosed to others.

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Good medical practice depends upon patients being able to discuss openly with the doctor the aspects of their health on the understanding that such details will be kept secret. It follows that any disclosure contrary to the individual's interest is also potentially detrimental to the public interest since it may discourage confiding in future.

With no guarantee that their secrets will be protected, patients may withhold important information about their health care and also about the wellbeing of others etc. A particular aspect of Medical Confidentiality has to do with the question of "truth telling".

From a historical point of view, the individualized medical confidentiality was the first confidentiality agreement to be established in the profession. In fact, the confidentiality in general, was mentioned for the first time in 900 BC by the king Solomon. Later on, the principle of Medical Confidentiality was presented in the Hippocratic Oath, in the 5th century BC: "Whatever, in connection with my professional practice or not, in connection with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret". In the paper, finally, the Albanian Legislation of the Medical Confidentiality is presented.

2. Medical Confidentiality

Medical confidentiality primarily aims to strengthen doctor-patient relationship and communication. The physician is required to receive detailed information from the patient in order to perform his mission better and with competence. In turn, the patient needs to be certain that confidentiality agreement will be ensured in order for the patient to speak freely to the physician. Rightly so, the researcher L. Portes, writes about this issue:

"There is no medicine if there is lack of trust, because there will be no trust if there are not confidential relationships between the doctor and the patient in place. These types of relationships cannot be created if confidentiality is not respected by the physician". Thus, the principle of medical confidentiality may be considered as a tool (instrument) that aids in achieving the goal of the medical profession which is healing. (4,6)

On the other hand, the inclusion of this principle in legislation shows that it has a general interest in the sense that it promotes the normal functioning of health institutions and social services. That is why this principle is considered to have a public character (social). In addition, medical confidentiality has deep humane value, based on the natural right of privacy, which is known to be part of the normal psyche

of a person. In this regard, medical confidentiality will be one of the conditions necessary for the realization of relationships between people, while protecting the privacy and independence of the person as well as promote the development of qualities such as respect, love, friendship, trust, etc. (4)

- *Cases where the principle of medical confidentiality does not apply* are specific situations encountered in dealing with infectious diseases as cholera, typhus, dysentery etc.; psychiatric illnesses such as schizophrenia, epilepsy that usually make people who suffer from them potentially dangerous to commit crimes; in violent deaths, unexpected deaths, deaths of pregnant women during abortion, to alcoholics, and addicts in dangerous social stages, etc. (6)

For example, a bus driver that suffers from epileptic crises, unknown to his employer, but known to his doctor. In this case, if the doctor would keep this a secret it would be dangerous for the others. Thus, medical secrets are not considered to be absolute.

- *The issue of collective application of the confidentiality principle* has been due to technical and scientific development of medicine, which has offset somewhat the classic doctor-patient relationship.

In modern medical practice, many specialists in various medical fields use information about the patient's health status. Thus, medical confidentiality will take a collective character in these circumstances, because the data on the disease will circulate through the various services of the health care, or other health centres. These actions are taken in order to have an effective treatment on the patient. Such revealing of medical secrets, as a result of its collective character, obviously requires a more meticulous observation of this principle.

- *The conflict between the confidentiality principle and measures to be taken to prevent the disease* has occurred because in order to achieve a preventive function for various diseases it is necessary to collect and disclose the information about the health status of individuals by health organizations.

Therefore, to fulfil the duty of prevention issues dealing with the disease of a certain person, it would not have their own character, but a public dimension thus violating the principle of maintaining medical confidentiality.

Of course, every individual's main requirement is to be treated for the disease from which he suffers, possibly in the most confidential manner, consequently respecting the principle of maintaining medical confidentiality. Yet, even the patient can accept the violation of this principle, if information on this disease will not only serve to prevent this pathology in general, but also to protect the patient's own health. (4,6)

However, the discrepancy between the objectives of the state and the objectives of the individual poses an ethical dilemma. A conflict arises between the right to maintain the privacy of the individual and the state's duty to protect public health and welfare.

3. Truth Telling

In terms of the physician medically informing the patient, "telling the patient the truth" (truth telling), constitutes a particular form of medical confidentiality. From the ethical standpoint, the main issue has to do with the attitude of the physician, if he must inform the patient about the diagnosis of disease and especially the progress (prognosis) of a serious or fatal illness.

In medical practice, the resolution of this issue is very sensitive and can be accomplished under these three models: (1,4,6)

- *The paternalistic model* (the doctor believes and acts to benefit the patient, rather than the patient himself), according to which the patient is not informed about the diagnosis and prognosis of the serious illness in order to protect the patient from suffering and death.
- *The libertarian model* (the patient has a complete freedom of choice for any medical action), according to which the physician informs the patient openly, immediately, and without hesitation about the diagnosis and prognosis of disease.

A typical example of the use of this model has been the case of the terminal illness of General Grant, commander of the Northern troops during the US Civil War, 1861-1865, and two times elected president of USA, in 1868 and 1872.

On June 2nd 1884, Grant felt an intense pain in his throat and face as he was biting down on a fruit. He was examined several times and finally after a biopsy he was diagnosed with the grave terminal illness of epidermoid carcinoma.

In terms of the ethical issue of truth telling, the physicians used the libertarian method. Upon his request, the physicians disclosed all the information about his diagnosis and the prognosis of the disease, which is death after several months.

In reality, the physicians' stance had a positive outcome, because it gave Grant the opportunity to write a memoir during the last months of his life and avoid leaving his family in a poor financial situation. After Grant's death, his wife and children inherited a large income from the sale of the book.(3,5)

- *The participatory model* (open dialogue between doctor and patient that is intended to benefit the latter), according to which the physician works with the

patient carefully and subtly, preparing the patient spiritually early, informing little by little about the real situation/serious illness or by initially notifying the relatives of the patient.

In our opinion, the most appropriate way of keeping the patient informed is by means of the participatory model which is, in fact, implemented in Albania.

4. Historical and Juridical aspects of Medical Confidentiality

From the historical point of view, the individualized medical confidentiality was the first confidentiality agreement to be established in the profession. In fact, the confidentiality in general, was mentioned for the first time in 900 BC by the king Solomon. Later on, the principle of Medical Confidentiality was presented in the Hippocratic Oath, in the 5th century BC: "Whatever, in connection with my professional practice or not, in connection with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret". (7)

In modern times, this principle is reflected in all international and national legislations. Since the formulation of this principle in the Hippocratic Oath and until its emergence in international ethical documents, such as the Oath of Geneva, in past centuries and previous times, medical secrecy held various positions, including its denial.

Thus, during the Middle Ages, confidentiality was manifested in Arab and Jewish medicine, while in the western civilization, it has been little known due to lack of organization of the medical profession.

However, in later periods, the confidentiality principle was saved from oblivion, resurfaced, actualized, and redefined, in accordance with the new developments in the fields of justice (law) and morality.

Since the 18th century, this principle of Hippocratic tradition was permanently institutionalized.

This development came about from two directions: one deontological and the other legal.

Thus, in Anglo-Saxon societies, the protection of medical confidentiality was considered only as a deontological guideline, so it was not legally protected (Common Law recognized the right of confidentiality to lawyers only). It seems that their stance stems from the influence of the writings of British doctors J. Gregory (1724-1772) and T. Percival (1740-1804). According to the latter, "discretion must be

strictly observed only if the circumstances require it" and that the physician called to testify "should tell the truth, the whole truth and nothing but the truth." In such a context, confidentiality received only a relative value and its protection was conducted only by members of relevant professional associations.

However, in France, maintaining medical confidentiality was mentioned in the penal code of 1810. Thus, confidentiality was more of a legal obligation rather than a moral requirement. This stance was projected and reinforced by the codes of civil procedure and criminal procedure. Later it was even confirmed in the codes of deontology.

These two directions pertaining to the attitude towards medical confidentiality are evident in most countries of the world. (6,7)

After the 1970s, the protection of medical confidentiality took a new turn, inspired by human rights issues. Thus, Article 12 of "Universal Declaration of Human Rights" stated: "No man shall be objected to interference in his private life or meddling of his honor and reputation."

This new development was reflected in many national and international legal documents, such as:

- Statement of the American Hospital Association on the rights of the sick (1972)
- Declaration on the Rights of the Sick (Lisbon 1981).
- Declaration on Human Genome and Human Rights of Unesco (1997). (2)

With the new trends in the second half of the 20th century, the concept of medical confidentiality was enriched significantly. Confidentiality transformed from a moral obligation to a legal obligation, while now it is transforming into a fundamental right. Thus, according to the modern ethical and legal priorities, the Hippocratic tradition of medical confidentiality is still affirmed as one of the key elements of medical ethics.

5. Juridical Aspects of Medical Confidentiality in Albania

Different problems of medical confidentiality were studied in our country, especially after 1990, and were also reflected in their respective legislation. Thus, in the Medical deontology code of 1994, the physician and the support staff have the obligation to ensure the preservation of confidentiality (explicitly stated in Articles 11, 12, 13).

However, in this first code of medical deontology, confidentiality has an absolute character because exclusions to medical secrets did not apply. It appears that applying of medical confidentiality was under the influence of the French code of medical deontology.

It is in this period, in 1995, the code of criminal procedure was enacted and in Section 282 indicated that "the medical staff is required to inform the judiciary about third-party individuals that help, or intervene in medical problems associated with a crime."

So, under this section of the law of parliament, which overrules the deontology code (in Albania is only approved by the Order of Physicians), the absolute character of medical confidentiality was depreciated.

In the Code of Ethics and Medical Deontology of 2002, Article 21 included provisions to keep patient confidentiality and in Article 22 – the disclosure of the secret. (8)

Similarly, Article 17 of the Code states: "The patient has the right to know the truth about his disease and to be informed with all results of analysis and other medical documents. However, if the physician judges that the information damages the health of the patient, then he is not obligated to inform him of the truth or to show him the medical documentation". Thus, under this section, the third model (participatory) is applied, which deals with the issue of truth telling to the patient.

Articles 16 and 18 include provisions that deal with the physician's obligation to inform the patient and the patient's family.

On the other hand, our legislation provides exclusions to medical confidentiality, for example, under Article 282 of the Code of Criminal Procedure, as mentioned above, as well as the obligation to report infectious diseases, according to the law of infectious diseases in 1993.

In fact, Albania has not had any cases of violation of the principle of medical confidentiality, which is enforced by the Ministry of Justice or the Order of Physicians of Albania.

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From the presentation and discussion of the above data, it should be noted that actually, the medical confidentiality is still affirmed as one of the most fundamental principles of medical ethics.

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