Medical Ethics in Clinical Practice

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Preface

In a concise phrase, the message of this book is:

how to be a good physician

Many have written about ethics: philosophers, theologians, journalists, politicians, economists, and others. This book about ethics is written by a physician. Day by day, year by year, physicians experience the distress of people who find themselves at the brink of life and death. The experience from real life is what separates mountaineers from television viewers and physicians from philosophers. This is not to say that the opinion of a physician counts more than that of a philosopher: the two simply observe a problem from different perspectives. When compared to other, more theoretical volumes on medical ethics, this book should contribute to a balanced understanding of the role that physicians play, or should play, in medicine and in society.

Medical Ethics in Clinical Practice is based on lectures to undergraduate students of medicine at the Faculty of Medicine in Maribor, Slovenia. Nevertheless, this is not a typical textbook: it takes us beyond a systematic analysis toward lived situations with no clear-cut distinctions or black and white categories. In ethics, values play a decisive role, and there are often no right or wrong opinions since everyone can assign different weights to different values. Thus, my goal was not to build a coherent and well-polished flawless system, but rather to spur and encourage creative thinking.

After the introductory chapter on the role of ethics in human relations, the text continues with a brief and admittedly simplified presentation of ethical theories and of ethical analysis. I attempted to avoid language that could only be understood by experts: my words are meant to stimulate practical reflection in everyone. The next few chapters deal with topics of importance for all physicians, regardless of their speciality: communication, interpersonal relations in a medical team, professional malpractice, and medicine with limited resources. In "the Portrait of a Physician," a broad landscape of our profession is presented, portraying exceptional historical figures as well as anonymous physicians, often overburdened and suffering from unrealistic expectations of their patients and of the whole of society. The last ten chapters present a wide array of ethical dilemmas in different branches of medicine, from preventive medicine, the beginning of life, and genetics to intensive care, end-of-life issues, and clinical research. By wandering through the paths outside of oncology as my own field of medical speciality, I here and there find myself walking

on thin ice; however, this is a small price to pay, compared to the alternative of offering only general rhetoric without an opinion on concrete ethical dilemmas.

The final part of the book contains a list of ethical problems and tasks, as presented to students of medicine. I hope that the readers will take them as an encouragement for reflection. Some tasks—such as a visit to a historic monument, a Partisan Hospital from World War II—are not practical for readers outside of Slovenia. I kept them on the list to give an idea to other teachers of medical ethics about the wide spectrum of experience which can stimulate ethical discussion.

Clearly, a book of modest size cannot include all the ethical dilemmas of modern medicine. While I am most grateful to reviewers for their comments and suggestions, the responsibility for including or omitting particular topics and for interpretation of ethical dilemmas is mine. To keep the discussion short, I explained my attitudes toward each ethical issue and did not attempt to offer a deep and balanced discussion of each problematic medical activity. Together with a comprehensive list of references, such an extensive discussion would grossly increase the volume—with an inevitable decrease in the interest in reading the book.

While the book has been written with physicians and students of medicine as the target audience, I am confident that it will be of interest also to professionals and students of other professions devoted to human health, to journalists, and to a general audience with an interest in medicine.

Comments and opinions are welcome: matjaz.zwitter@guest.arnes.si

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Maribor, Slovenia Matjaž Zwitter

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Ethics and Law

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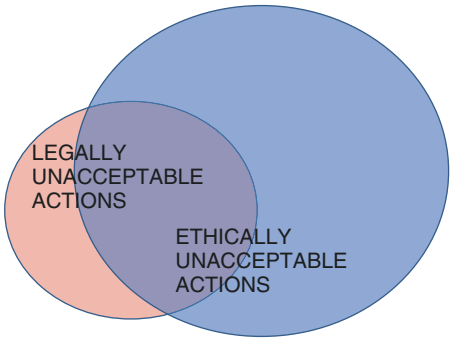
Abstract

Human conduct and relations are regulated by legal and ethical norms. Why are there two systems? Legislation consists of clear formulations, is limited by political frontiers, and has clear sanctions. In contrast, ethical norms are broader and often limited to recommendations, may cross political or cultural borders, and may be applied retroactively. While the legal system adequately regulates relations among individuals of a comparable position, it often fails to protect the weak side in cases of significant differences in power and social weight. The relations of children to parents, students to teachers, citizens to politicians, readers to journalists, and patients to physicians are examples for which the legal system alone cannot offer adequate protection to the weak side, and for which ethical limitations to the power of the stronger side are essential.



Partial overlap of legally unacceptable actions and ethically unacceptable actions. Some actions are not against the law but are ethically unacceptable; and vice versa

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On his desert island, Robinson Crusoe needed neither laws nor ethics. However, when we live in a community with other people, our freedom is limited by the freedom, interests, and rights of others—the people we share our planet with and the people of the past and future generations, and also by the freedom, rights, and interests of other living beings. Therefore, we need rules that we can use as guidelines for avoiding conflicts. Such rules can be written as part of legal norms. As we are about to explore, however, legal norms alone are not enough: for a coherent and active society, we also need ethics.

1.1 Law

Law is based on explicit, written norms with a clear system for enacting such norms. Legal norms (approved international agreements, national constitutions, laws, and regulations) are organized hierarchically, should be mutually consistent, have a clearly defined spatial scope of their enactment, and can only apply to actions committed after the legal norm has been enacted. When an individual violates a specific legal norm, clearly defined procedures for establishing guilt and prescribed sanctions are in place.

Constitutions, laws, regulations, and other similar documents provide us with precise guidelines on how to act as individuals in a society. Why then do we need ethics?

1.2 Ethics

The foundations of ethics are different. When we evaluate an act as unethical, we most often do not refer to any concrete ethical document. For millennia, ethical rules have been incorporated into all religions. Fascinating are the many similarities between the Jewish and Christian ten commandments, the Islamic ten commandments, and the five principles of Buddhist ethics (prohibition of killing, stealing, lying, sexual misconduct, and alcohol consumption). It appears that the basic ethical principles are grounded in the fabric of human society and, therefore, extend beyond the limits of time and place set forth by political, national, or religious belonging.

Ethical commandments found in different religions apply to all members of a religious community. In a state where a religious doctrine is formally linked with state authorities or when it adopts a leading role, such commandments often apply to all citizens. In addition, smaller communities create their own specific ethical rules that are adopted by very different groups: physicians, nurses, teachers, scientists, journalists, economists, lawyers, retailers, artisans, politicians, athletes, hunters, and soldiers, to name just a few. All human pursuits have led to the creation of rules that should be respected if we want to perform the activities in line with the interests of other members of the group and the society as a whole. Ethical rules of any given group, therefore, act inwards and outwards: they regulate the relations within the group and protect the group as a whole from conflicts with a wider community.

Once we realize how variable the societal circles that adopt such ethical rules are, it becomes obvious that we are not talking about a coherent system, but rather a set of rules which often even contradict each other. Another difference between legal and ethical rules is that the latter do not generally prescribe sanctions; when ethical rules do include sanctions, these only carry "social" consequences—for example, an individual might be expelled from the group.

1.3 Law and Ethics: Why Do We Need Two Systems?

Why then do we need ethics in addition to legal norms for regulating our society? Would it not suffice if we simply translated some of the ethical provisions into the legal system?

Here one must realize that the law is fairly successful in regulating relations among individuals of comparable power. When the rules for regulating the relations are abused, the victim of comparable power has all legal means available for claiming his or her rights. The victim's situation changes drastically, however, when the involved parties happen to be in a relationship of clear inequality. Consider the following relationships: doctor–patient, politician–citizen, teacher–student, journalist–reader, parent–child, nursing staff–client in a retirement home. These are all instances of relationships with profound imbalances in knowledge, power, position in the local environment and in society at large, and in capacities for action, such that a potential victim cannot be sufficiently protected by the law. Moreover, the weaker party almost never relies on legal protection. Can you imagine citizens suing politicians for fraud when the latter fails to fulfill the promises that brought them to their current positions? In private conversations, patients will often complain about the way the healthcare staff treated them; nevertheless, filed complaints of this sort are relatively rare. Similar conclusions apply when considering the environmental damage we are leaving behind for our future generations: the children of our children cannot take legal action against us; nevertheless, they should have the right to be born in a healthy environment.

We have already seen that in cases of violations, ethics does not provide clear sanctions, as the law does. Let us point out another difference between the two systems: ethical guidelines are not as fixed as legal norms, they are more general and, as such, much more open to interpretation. Whereas laws apply only to activities after enactment of a legal norm and great attention is paid to how norms are put into words, ethical guidelines can be interpreted from a broad range of perspectives and can occasionally even be retroactive. Is this a disadvantage? I do not think so. In times of rapid changes, legal systems often cannot cope with the new aspects of all human activities. Consequently, numerous acts that we do not approve of and that are not beneficial to society are left unsanctioned. In business, financial markets, environmental damage, healthcare systems, especially when healthcare meets the pharmaceutical industry, there is a great deal of wrongdoing and fraud that the legal system has not (yet) recognized and included on the list of prohibited activities. Ethics aids us in assessing such acts and reaching a stance on the issues at hand.

Those who violate legal norms are subjected to the judicial system with prosecutors and judges. Violations of ethical principles, in contrast, are for the most part dealt within professional organizations, for example, in ethical councils operating within a medical chamber, bar association, or an association of journalists. It is true that there will be more room for compassion in professional circles when considering the misconduct of a colleague—the oft-voiced public criticisms of professional solidarity are therefore at least in part valid. However, those professional organizations that are aware of their societal role and responsibility will certainly not protect a single member to the detriment of all others and will hence clearly pronounce on violations of ethical rules. The goal should not be vengeance and punishment, but rather correcting mistakes. From the wrongdoer's perspective, an ethical conviction by professional colleagues—even if only in a moral sense—will have much more significant bearing than a conviction obtained by those who "do not know much about the topic anyway." Such concerns only strengthen the importance of ethical considerations.

In the chapters that follow, I focus on healthcare ethics, a part of bioethics as a broad field concerning all ethical issues relevant to biological sciences.

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Ethical Codes and Declarations

2

Abstract

From Hippocrates and Chinese and Islamic healers to modern times, ethical codes and declarations are an essential component of medical education and conduct. Even after many centuries, the early documents on medical ethics are outstanding examples of clear, precise, and timeless formulations. In recent decades, dramatic changes to the practice of medicine have led to an enormous increase in the volume of ethical declarations and documents. Nevertheless, these documents lag behind the rapid new developments in medical research and practice and cannot offer advice in situations in which some ethical costs are inevitable and in which a compromise has to be made.

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Ο ΟΡΚΟΣ ΤΟΥ ΙΠΠΟΚΡΑΤΥ

Ομνυμι Απόλλωνα ίητρόν και Άσκληπιόν και Ύγείαν και Πανάκειαν και θεούς παντός τε και πάσας, 'ίστορας ποιεύμενος, έπιτελέα ποιήσειν κατά δυναμιν και κρίσιν έμήν βρκον τόνδε και ξυγγραφήν τήνδε· ήγήσασθαι μεν τον διδάξαντα με την τέχνην ταύτην Τσα γενέτησιν έμοΤσι, και βίου κοινώσασθαι, και χρεών χρηΐζοντι μετάδοσιν ποιήσασθαι, και γένος το εξ ωϋτέου άδελφοϊς ίσον έπικρινέειν αρρεσι, και διδάξειν την τέχνην ταύτην, ην χρηΐζωσι μανθάνειν, άνευ μισθοϋ και ξυγγραφής, παραγγελίης τε και άκροήσιος και της λοιπής άπάσης μαθήσιος μετάδοσιν ποιήσασθαι υΙοΤσί τε εμοΓσι, και τοϊσι του έμέ διδάξαντος, και μαθηταΐσι συγ-γεγραμμένοισί τε και ώρκισμένοις νόμω ίητρικω, αλλω δε ούδενί.

Διαιτήμασί τε χρήσομαι έπ' ώφελείτ) καμνόντων κατά δυναμιν και κρίσιν έμήν, επί δηλήσει δε καΐ άδικίη ε'ίρξειν. Ου δώσω δε ουδέ φάρμακον οϋδενι αιτηθείς θανάσιμον, ουδέ ύφηγήσομαι ξυμβουλίην τοιήνδε' ομοίως δε ουδέ γυναικί πεσσόν φθόριον δώσω. Άγνώς δε και όσίως διατηρήσω βίον τον έμόν και τέχνην την έμήν. Ου τεμέω δε ουδέ μην λιθιώντας, εκχωρήσω δε έργάτησιν άνδράσι πρήξιος τήσδε.

'Ες οικίας δε όκόσας αν έσίω, έσελεύσομαι έπ' ώφελείτ) καμνόντων, έκτος έών πάσης άδικίης έκουσίης καΐ φθορίης, της τε άλλης και αφροδισίων έργων επί τε γυναικείων σωμάτων και άνδρώων, ελευθέρων τε και δούλων. "Α δ' αν εν θεραπείη ή ϊδω, ή ακούσω, ή και άνευ θεραπηΐης κατά βίον ανθρώπων, 'ά μη χρή ποτέ έκ-λαλέεσθαι ε'ξω, σιγήσομαι, άρρητα ήγεύμενος εΤναι τα τοιαύτα.

"Ορκον μεν οδν μοι τόνδε έπιτελέα ποιέοντι, και μη ξυγχέοντι, εΐη έπαύρασ-θαι και βίου καί τέχνης δοξαζομένω παρά πασιν άνθρώποις ες τον αίεί χρόνον πα-ραβαίνοντι δε και έπιορκοϋντι, τάναντία τουτέων.

In the European tradition, the Hippocratic oath is the oldest and most respected code of medical ethics

In the previous chapter, we mentioned several professional groups that recognize the necessity of conforming to ethical activity, especially in situations of imbalance of power. Among all professions, medical doctors were the first to recognize the importance of a proper ethical approach.

There are two ways of determining whether an act is ethical. The first approach, as presented in this chapter, is to compare the act against written guidelines—ethical codes and declarations. In the chapters that follow, we will introduce ethical analysis as the second approach: the act is evaluated by reasoning about the degree to which it is in accordance with specific ethical principles.

2.1 Hippocratic Oath and Other Ancient Documents

When discussing ethical codes and declarations, one has to begin with Hippocrates. The most important legacy of Hippocrates and of his students is the Hippocratic Oath. After 2500 years, this document remains the foundation of medical ethics.

Roughly 1000 years later, the renowned Chinese physician, Taoist, and alchemist Sun Simiao presented his ethical recommendations for physicians in his book entitled *On the Absolute Sincerity of Great Physicians* [1].

In the ninth century, Ishaq bin Ali Rahawi was the first to write a book on the principles of medical ethics in the Islamic world. In 20 chapters, the book lays out guidelines for the work of physicians. As the guardian of the patient's body and soul, the physician should work for the benefit of the patient, even if the patient is considered an enemy. The physician shall not prescribe any lethal drugs or assist with an abortion. Ali Rahawi also wrote the rules of good behavior, confidentiality and non-corruption, and mutual respect and solidarity between physicians [2].

Let us not forget that these documents written by physicians are older than any law aiming at regulating medical work and protecting patients' rights. At that point in time, ethics was already a major step ahead of law, and I dare to say the same still holds today.

Hippocratic Oath

I swear by Apollo Physician and Asclepius and Hygieia and Panaceia and all the gods and goddesses, making them my witnesses, that I will fulfill according to my ability and judgment this oath and this covenant:

- To hold him who has taught me this art as equal to my parents and to live my life in partnership with him, and if he is in need of money to give him a share of mine, and to regard his offspring as equal to my brothers in male lineage and to teach them this art—if they desire to learn it—without fee and covenant; to give a share of precepts and oral instruction and all the other learning to my sons and to the sons of him who has instructed me and to pupils who have signed the covenant and have taken an oath according to the medical law, but no one else.
- I will apply dietetic measures for the benefit of the sick according to my ability and judgment; I will keep them from harm and injustice.
- I will neither give a deadly drug to anybody who asked for it, nor will I make a suggestion to this effect. Similarly I will not give to a woman an abortive remedy. In purity and holiness I will guard my life and my art.
- I will not use the knife, not even on sufferers from stone, but will withdraw in favor of such men as are engaged in this work.
- Whatever houses I may visit, I will come for the benefit of the sick, remaining free of all intentional injustice, of all mischief and in particular of sexual relations with both female and male persons, be they free or slaves.
- What I may see or hear in the course of the treatment or even outside of the treatment in regard to the life of men, which on no account one must spread abroad, I will keep to myself, holding such things shameful to be spoken about.
- If I fulfill this oath and do not violate it, may it be granted to me to enjoy life and art, being honored with fame among all men for all time to come; if I transgress it and swear falsely, may the opposite of all this be my lot.

The Purpose of Medical Practice

1. The object is to help, not to gain material goods.
2. Save life and do not kill any living creature.
3. Do not seek fame: virtuous conduct will be rewarded by humans and spirits.

The Requirements of a Great Physician

4. Master the foundations of medicine thoroughly, work energetically and unceasingly.
5. Be mentally calm and firm in disposition; do not give way to selfish wishes and desire.
6. Commit oneself with great compassion to save every living creature.

Manner of Medical Practice

7. Possess a clear mind and maintain a dignified appearance.
8. Do not be talkative, engage in provocative speech, or make fun of others.
9. Do not ponder upon self-interest and fortune; sympathize and help wholeheartedly.
10. Examine and diagnose carefully, prescribe accurately, and cure effectively.

Attitude Towards Patients

11. Treat everyone on an equal basis, no matter whether they are rich or poor.
12. Do not reject or despise a patient who suffers from abominable diseases such as ulcers and diarrhea: be compassionate and sympathetic.
13. Do not enjoy oneself in a patient's house while the patient is suffering.

Attitude Towards Other Physicians

14. Do not belittle another physician in order to exalt one's own virtue.
15. Do not discuss others and decide about their rights and wrongs.

Why are we mentioning the Hippocratic Oath, Sun Simiao's ethical guidelines, and Rahawi's recommendations? Despite the fact that these texts were created in different cultural, religious, and social environments over a span of more than 1500 years, there are astonishing similarities between them. Diligence and professional competence, protection of life, compassion and help for the sick regardless of their social status, humility and relinquishing one's own comfort, confidentiality, solidarity among physicians—it is remarkable how valid these written rules remain today.

2.2 Medical Ethics in Modern Documents

Nowadays, written ethical codes and declarations abound. Such documents have been adopted by national and international professional medical associations, as well as by specialized medical associations in the fields of gynecology, psychiatry,