

Medical Ethics in Clinical Practice

Matjaž Zwitter



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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

Contents

1	Ethics and Law	1
1.1	Law	2
1.2	Ethics	2
1.3	Law and Ethics: Why Do We Need Two Systems?	3
	Suggested Reading	4
2	Ethical Codes and Declarations	7
2.1	Hippocratic Oath and Other Ancient Documents	8
2.2	Medical Ethics in Modern Documents	10
2.3	Advantages and Disadvantages of Normative Ethics	11
	References	11
3	Ethical Theories	15
3.1	Utilitarian Ethics	17
3.2	Deontological Ethics	18
3.3	Virtue Ethics	19
3.4	The Four Principles and Common Morality Ethics	20
	Reference	22
4	Moral Status	23
4.1	Who Has Moral Status?	24
4.2	Criteria for Moral Status	25
	Reference	27
5	Ethical Analysis	29
	Suggested Reading	34
6	Autonomy and Its Limitations	35
6.1	Right to Information	37
6.2	Right to Confidence	37
6.3	Right to Privacy	39
6.4	Voluntary Surrender of Autonomy	40
6.5	Patients' Autonomy and Cultural Diversity	40
6.6	Persons with Limited Autonomy	40
6.7	Surrogate Decision-Makers	41

6.8	Advanced Directives	42
6.9	Physician's Autonomy and Conscientious Objection	43
	Suggested Reading	43
7	Communication	45
7.1	Information Flows in Multiple Directions	46
7.2	Communication as a Process	47
7.3	Modern Media and the Internet	47
7.4	The Broad Scope of the Conversation	48
7.5	The Opaqueness of the Medical Jargon	49
7.6	Cultural Diversity	50
7.7	Practical Advice	50
	Suggested Reading	51
8	Relations in the Medical Team	53
8.1	Professional Competence	54
8.2	Communication in a Medical Team	54
8.3	Disagreement and Conflicts	55
8.4	Positive Team Spirit	56
	Suggested Reading	56
9	Professional Malpractice	57
9.1	Mistake, Error, Neglect, Unfortunate Coincidence?	58
9.1.1	Limited Resources, Compromises in Probability-Based Medicine, and the Right to Compensation	59
9.2	Criminalization of Professional Malpractice	60
9.3	The Media, the Public, and Professional Mistakes	60
9.4	Support for the Accused Physician	61
	Reference	61
10	Limited Resources, Priorities, and Corruption	63
10.1	Consequences of Poorly Organized Healthcare	64
10.2	Probability-Based Medicine	66
10.3	Priorities	67
10.4	Corruption	69
	Reference	70
11	Image of a Physician	73
11.1	The Physician in Exceptional Circumstances	75
11.2	Who Is a Good Physician?	76
11.3	Who Is Draining the Idealism from Our Profession?	77
11.4	Burnout and the Anchor Outside Medicine	77
11.5	Conscientious Objection and the Respect of Personal Values	78
11.6	Digressions	79
	Suggested Reading	80
12	Preventive Medicine	81
12.1	Vaccination	82
12.2	Healthy Lifestyle	83

12.3	Protection of Vulnerable Groups of Society	84
12.4	Epidemiology and Epidemiological Studies	84
12.5	Return to the Introductory Parable.	84
	Suggested Reading	85
13	Ethics at the Beginning of Life.	87
13.1	Natural Conception	88
13.1.1	Contraception.	88
13.1.2	Morning-After Pill.	88
13.1.3	Abortion.	88
13.1.4	Prenatal Diagnostics	89
13.1.5	Delivery at Home.	90
13.2	Sterilization	90
13.3	Insemination or Egg Cell Donation	90
13.4	Medically Assisted Insemination for Healthy Women.	91
13.5	In Vitro Fertilization.	92
13.6	Surrogate Motherhood	93
	References.	94
14	Pediatrics	97
14.1	The Newborn	98
14.2	Vaccination.	99
14.3	Child Neglect and Maltreatment	101
14.4	Chronic Disease and Communication	102
14.5	Genetics	102
14.6	Death of a Child.	103
14.7	Research.	103
	References.	104
15	Genetics	105
15.1	What Information Can Be Gained from Genetic Testing?.	106
15.2	Disease Exclusion, Choice of Gender, and Selection of Other Traits of the Future Child	107
15.3	Genetic Testing in Childhood and Adulthood	109
15.4	Accidental Findings	110
	Suggested Reading	111
16	Emergency Medicine and Transplantation.	113
16.1	Admission to the Intensive Care Unit	115
16.2	Introducing, Withholding, and Withdrawing Intensive Care	115
16.3	Futile Intensive Care	116
16.4	Determining Death.	116
16.5	Organ Transplantation	117
	Reference	118
17	The Elderly and the Mentally-III.	119
17.1	Who Are the Elderly?.	121
17.2	Who Are the Mentally III?.	122

17.3	Impaired Critical Judgement and Loss of Autonomy	123
17.4	Surrogate Decision-Making	123
17.5	Acting Against the Will of the Patient	124
17.6	Hunger Striking and Anorexia Nervosa	124
17.7	Social Status and Stigmatization	125
	Suggested Reading	125
18	Dying and Death	127
18.1	The Wish to Die and Suicide	129
18.2	What Is Not Euthanasia?	130
18.3	Euthanasia and Physician-Assisted Suicide	130
18.4	Persistent Vegetative State	132
18.5	On Immortality	133
18.6	Education and Research	134
	References	134
19	Research	137
19.1	The Four Phases of Clinical Trials	139
19.2	Patient Information	141
19.3	Academic Clinical Trials	142
19.4	Clinical Trials with a Commercial Sponsor	143
19.5	Progress, Patient Solidarity, and Honesty	146
	References	147
20	Unproven Methods of Diagnostics and Treatment	151
20.1	Alternative Diagnostics	153
20.2	Supplementary and Alternative Treatment	154
20.3	Right to Try	154
	References	156
21	Physicians Beyond Patient Care	157
21.1	Managerial Responsibilities and Politics	158
21.2	Expert	159
21.3	The Physician, the Pharmaceutical Industry, and Medical Equipment Providers	159
21.4	Teacher	160
21.5	The Physician in Public	161
21.6	Sports Medicine	161
21.7	Physician as Patient	162
	References	163
22	Student Seminars	165
22.1	Surrogate Motherhood	168
22.2	Physician's Confidentiality	169
22.3	Eluana Englaro	169
22.4	Love Life	170

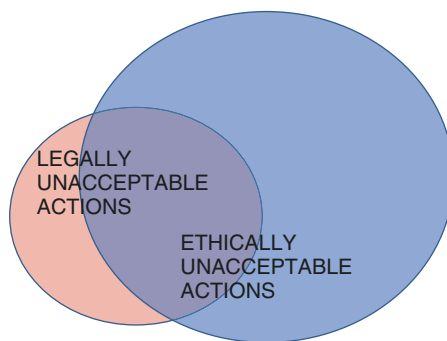
22.5	Donor for Bone Marrow Transplantation.	170
22.6	Unsolicited Medical Intervention	171
22.7	Elderly Driver	171
22.8	Posthumous Insemination	172
22.9	Physician as Patient	172
22.10	Crime Due to Mental Disease	173
22.11	Conscientious Objection	173
22.12	Ethics and Gladiators in Professional Sports.	174
22.13	Medical Malpractice and the Right to Compensation	174
22.14	Anorexia Nervosa	175
22.15	Prevention of Pregnancy in Psychiatric Patient	175
22.16	Placebos in Clinical Trials	176
22.17	Choosing the Gender of the Newborn	176
22.18	Vegan Diet for Children	177
22.19	Accusation of Medical Malpractice: Disclosure of Personal Information	177
22.20	Boxing	178
22.21	Gifts	178
22.22	Drug Addicts, Pregnancy, and Parenthood.	179
22.23	Who Is a Good Physician?	179
22.24	Parents Declining Mandatory Vaccination of Their Children	179
22.25	Collaboration Between the Psychiatrist and the Family Physician	180
22.26	Medically Assisted Insemination for Healthy Women.	180
22.27	Physicians as Leading Politicians	181
22.28	Shooting as an Olympic Sport	181
22.29	Fine-Needle Biopsy of the Breast for a 12-Year-Old Girl	182
22.30	The Death of Ivan Ilyich	182
22.31	Waiting Periods for Funerals	182
22.32	Cancer Ward	183
22.33	Physician-Alcoholic	183
22.34	Disappearance of Inexpensive Drugs with Long-Lasting Positive Experience	183
22.35	Empathy and Trust	184
22.36	Medical Treatment of Patients Without Health Insurance	184
22.37	Doping in Sports	185
22.38	Intimate Relationships with a Patient	185
22.39	Paulo Coelho: Veronica Decides to Die	186
22.40	Communication with a Troublesome Patient	186
22.41	The Franja Partisan Hospital	187
22.42	Donor of Embryonic Stem Cells and Anonymity	187
22.43	Addiction to Prescription Drugs	188
22.44	Literature as a Medication	189
22.45	Sinclair Lewis: "Arrowsmith"	189

22.46	Female Genital Mutilation	189
22.47	Accusation of Medical Malpractice	190
22.48	Transport of a Dying Chronic Patient to the Emergency Department	191
22.49	Dr. Catherine Hamlin	191
22.50	An Aggressive Patient	192
22.51	Legalization of Marihuana	192
22.52	Lay People's Attitudes Towards Euthanasia	192
22.53	Discrimination	193
22.54	Is Pedophilia a Disease?	194
22.55	The Nuremberg Trial Against Nazi Physicians	194
22.56	Humor in Communication with Patients	194
22.57	Obamacare—American Healthcare Reform: Successes and Difficulties	195
22.58	Child Abuse	195
22.59	Ethical Questions in Self-Inflicted Diseases	196
22.60	Homeopathy	197
22.61	Treatment of the Demented Patient	197
22.62	The Physician in Commercials	198
22.63	The Ebola Epidemic: Ethical Questions	198
22.64	Gene Testing in Underage Daughters	199
22.65	Revocation of Driver's License	199
22.66	Airplane Seats for Overweight Persons	200
22.67	Individual Consent for Review of Old Biopsies	200
22.68	Love in a Nursing Home	201
22.69	Professional Sports in Children	201
22.70	Medical Strike	202
22.71	Artificial Womb	202
22.72	Genetic Testing for Prediction of a Disease	202
22.73	Cancerphobia	203
22.74	Communication in the Waiting Room	204
22.75	Traditional Medicine	204
22.76	Late Termination of Pregnancy	204
22.77	Postponement of Prison Sentence Service for Health Reasons	205
22.78	Animals in Biomedical Research	205
22.79	Death of Grandparents	205
22.80	Guerilla Surgeon	206
22.81	Loneliness	206
22.82	Mental Health of Political Leaders	207
22.83	Eugenics	207
22.84	Fatherhood	207
22.85	Mark Langervijk	208

22.86	Molière and the Characters of Physicians	208
22.87	Alternative Diagnostics	208
22.88	Trade with Human Organs for Transplantation	209
22.89	Dr. Thomas Percival: Medical Ethics.	210
22.90	Mielke and Mitscherlich: “Doctors of Infamy—The Story of the Nazi Medical Crimes”	210
22.91	Oregon: The Death with Dignity Act.	211

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

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.

Ο ΟΡΚΟΣ ΤΟΥ ΙΠΠΟΚΡΑΤΥ

Ομνυμι Απόλλωνα Ιητρόν και Ἀσκληπιόν και Ὑγείαν και Πανάκειαν και θεούς παντός τε και πάσας, ἴστορας ποιεύμενος, ἐπιτελέα ποιήσιν κατά δυναμιν και κρίσιν ἐμήν βρκον τόνδε και ξυγγραφὴν τήνδε· ἡγήσασθαι μεν τον διδάξαντα με την τέχνην ταύτην Τσα γενέτησιν ἑμοῖσι, και βίου κοινώσασθαι, και χρεών χρηίζοντι μετάδοσιν ποιήσασθαι, και γένος το εξ ωὔτεου ἀδελφοῖς ἴσον ἐπικρινέειν ἀρρεσι, και διδάξειν την τέχνην ταύτην, ην χρηίζωσι μανθάνειν, άνευ μισθοῦ και ξυγγραφῆς, παραγγελίης τε και ἀκρόησιος και της λουτήης ἀπάσης μαθήσιος μετάδοσιν ποιήσασθαι υιοῖσι τε εμοῖσι, και τοῖσι του ἐμέ διδάξαντος, και μαθηταῖσι συγ-γεγραμμένοις τε και ὠρκισμένοις νόμω ἱητρικῳ, ἀλλω δε οὔδενί.

Διαιτήμασί τε χρήσομαι ἐπ' ὠφελείτ) καμνόντων κατά δυναμιν και κρίσιν ἐμήν, ἐπὶ δηλήσει δε κατ' ἀδικίη ἐ'ίρξειν. Ου δώσω δε ουδέ φάρμακον οὔδενι αιτηθείς θανάσιμον, ουδέ ὕφηγησμαι ξυμβουλίην τοιήνδε' ομοίως δε ουδέ γυναικί πεσσόν φθόριον δώσω. Ἀγνώς δε και ὀσίως διατηρήσω βιον τον ἐμόν και τέχνην την ἐμήν. Ου τεμέω δε ουδέ μην λιθιώντας, εκχωρήσω δε ἐργάτησιν ἀνδράσι πρήξιος τήσδε.

Ἐς οικίας δε ὁκόσας αν ἐσίω, ἐσελεύσομαι ἐπ' ὠφελείτ) καμνόντων, ἐκτος ἑών πάσης ἀδικίης ἐκουσίης κατ' φθορίης, της τε ἄλλης και ἀφροδισίων ἐργων ἐπὶ τε γυναικείων σωμάτων και ἀνδρών, ελευθέρων τε και δούλων. "Α δ' αν εν θεραπειῇ ἡ ἴδω, ἡ ακούσω, ἡ και άνευ θεραπιῆς κατά βιον ανθρωπων, 'α μη χρη ποτέ ἐκ-λαλέεσθαι ἐ'ξω, σιγήσομαι, ἀρρητα ἡγεύμενος εἶναι τα τοιαῦτα.

"Ορκον μεν οδν μοι τόνδε ἐπιτελέα ποιέοντι, και μη ξυγχέοντι, εἴη ἐπαύρασ-θαι και βίου καὶ τέχνης δοξαζομένῳ παρὰ πασιν ἀνθρώποις ες τον αἰεὶ χρόνον πα-ραβαίνοντι δε και ἐπιορκοῦντι, 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 Panacea 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,