THREE PERSONALITIES OF MEDICINE – REPRESENTATIVE FOR MEDICAL ETHICS WITHIN ROMANIA

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Abstract: Kernbach, Nicolae Minovici and I. Stănescu are three outstanding personalities of medicine, famous not only for their research, but also for their involvement in developing medical ethics. If Kernbach substantiated a few notions about medical responsibility in 1935, Nicolae Minovici, one of the most important forensic doctors of his time, is also known for his important research in the deontology field, illustrated by his two written works: “Professional Secret” and “Ethics of Medical Responsibility”, worked out in collaboration with I. Stănescu. We have recognized nowadays that medical ethics of our century must be approached and dealt with from historical perspective: the acquaintance with the predecessors’ point of view is a favorable element in the restoration process upon medical ethics in the current context of medical development.

Key words: M. Kernbach, N. Minovici, I. Stănescu medical ethics.

1. Introduction

Ever since the period of Hammurabi’s Babylon or Hypocrates’ Greece so far, medical ethics has stood for the system of moral and social laws that marked professional activity so that it should comply with the highest standards of society.

In this context, the medical ethics of the 20th century must likewise be considered from the historical perspective; therefore the acquaintance with our predecessors’ standpoints will constitute a favorable element in the process of restoring medical ethics in the framework of the medical progress.

The fear of “public opinion”, the fear lest we should be considered nostalgic has brought about that an ever-diminishing number of physicians cope with the theoretical aspects of medical ethics.

Within this very context there inscribes the tendency manifested by the leaders of Romanian medical education, to neglect the importance of medical ethics, as well as the emphasis we should lay on those materials which contribute to modeling the moral and spiritual profile of the future professionals within the medical staff. We make reference at this point to the history of medicine, to medical sociology, to medical anthropology or to medical psychology.

We should not overlook that “The physician, through a happy dignity of his

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fate is likewise followed and obeyed outside his battlefield” (Ozun, Poenaru).

Therefore, bearing in mind and bringing to memory the example offered by some forerunners is not only a duty incumbent on us, but also a necessary step for rekindling ethical and moral values in the attention of both medical staff and general audience.

Noteworthy personalities of the Romanian medical world have been preoccupied with emphasizing the physician’s role, with positively assessing and appraising the particularities of the medical act, of the responsibility incumbent on the medical professionals, with the high moral standards applied by society to these professionals.

2. Historical background.

Since Antiquity so far, medical science has greatly evolved, however a series of ethical percepts have kept their authenticity.

There is worth reminding at this point the muniment (charter) issued by Scarlat Calimachi in 1813, in his quality of waiwode of Moldavia, muniment that points out the obligations of the doctors of those times.

“At any time, by night or in daytime, either called for by the boyars, or by the clergy or by the poorest and foreigner, no one should dare allege encumbering tasks or delay their medical examination for the following day, therefore people’s life; who, either by carriage, or on foot, should run themselves out of breath towards the suffering ones.”

The text emphasizes the fact that these doctors must provide medical assistance indiscriminately, whatsoever the patient’s material status or nationality; furthermore, the same text specifies that medical assistance can only be provided in case of illness; otherwise the patient being excluded from the medical corpus.

We should not forget that this legislative act, regulating the person’s right to medical assistance and the physician’s duty to perform his duty, is dated in the 19th century.

That very century, however after approximately 50 years, the great reformer of medical assistance in Romania, physician Carol Davila put forth in writing: “The physician of the circumscription, beside his medical appointment, also performs a moral, foreseeing mission.”

V. Gomoiu – “Within medical profession, nothing can be mechanical, reflex, this is the profession compelling to a permanent strain of consciousness, as our profession directly addresses human being, his life and health.

3. Kernbach

Great personality of Romanian forensic medicine Mihai Kernbach studies at Berlin, Graz, Lyon and Zürich and work in Cluj where he through all steps of the academics hierarchy up to professor. After Cluj period he became doctor at Iasi University, where he taught forensic medicine.

Mihail Kernbach it was not only a distinguished educator but also a important researcher. He publish more than 250 scientific paper, including article, books.

In 1935, Kernbach substantiated a few notions in connection with medical responsibility: “No social group can avail from immunity. We have long overcome the epoch of the privileged classes upon the law”; however, not supporting the thesis of medical irresponsibility, Kernbach stated: “The tendency of the doctrine, within our days, is incontestably towards raising the physician’s responsibility, so that he should be brought to account for the slightest error, as soon as it may be framed within a text of law.”
4. Nicolae Minovici and I. Stănescu

In this context, we deem of usefulness to submit and analyze two works drawn up by the physicians Nicolae Minovici, I. Stănescu: “Professional Secret”, issued in the Bulletin of the College of Physicians, during 1938, and “Ethics of Medical Responsibility”, issued an year later, during 1939.

In these two articles, the noteworthy physicians prove themselves to be valuable historians of ethics, who managed to achieve a tour of ethics history on worldwide level and throughout our country.

Physicians of outstanding value, they likewise became conspicuous as ethics theoreticians of great value, given the proof of this statement: “As practicing physicians, we do not only cure the disease, but the individuals suffering from such or such illness; whatsoever the conscientiousness we would apply in repairing the motor propelling human life, it is almost utterly excluded to neglect a mere single piece within this system, whose perfect knowledge is only held by the one who created human being.”

They also deemed that “the physician has to continuously update his medical knowledge; he must not mistake his university diploma for a license patent, which might occupy him for his personal benefit and not for collective interests.”

The obligation to comply in due time with any patient’s request is enforced, bringing forth to memory the fact that ever since 1813, Scarlat Calimachi stated: „The doctors and the midwives should be under obligation to get out of breath with running when called for not only by the boyars (only these ones were able to render themselves cured by doctors!) but also by the poor and by the wretched, as the word of Bible urges them to, which compels them to: „when being summoned and called for at any time, by night or during daytime, no one should dare to allege encumbering duties as pretext, or to delay the medical examination for the following day, therefore endangering people’s lives, otherwise, unless justified by well grounded reason of “bodily powerlessness”, any of the doctors will be cast out of the healers’ corporate body and his wages will be blasted and ultimately will count to nothing”.

The main preoccupation consists in the professional secrecy, which he deems an enigma so great and so ancient, as this ever-rising edifice which, through social consciousness, constitutes “human soul”, “collective mentality”, as a “nervus rarum of consumption life.”

Conspicuously, the most important thing should be “conscience – that form of manifestation put on by collective soul – and only afterwards the rigid article of law.”

Consciousness is often deemed an abstract notion. For the two Romanian physicians, consequently for Minovici, too “Conscience cannot be conceived but as the wholeness of the “moral laws” precepts, as an expression of social harmony, on whose bases the individuals within an organized collectivity should cultivate the “good” and give a wide berth to “evil” “and obnoxiousness” from the standpoint of the individual or collective interest.”

Minovici agrees with these information, the proof being the acknowledgement upon the fact that if “every individual only had rights and we denied him any duty, and especially his moral duty, then, within a State there would be a permanent fight, battled by the individual against community, and therefore battled by everybody against all.”

Furthermore, Nicolae Minovici’s
brother, Mina Minovici declared his opinion in this respect, considering: “Much like a laic father confessor, the physician has ears to hear and eyes to behold; in comprehending his moral duty, he has no other judge than his conscience”, and “the duty dictated by consciousness needs no longer be defined.”

We may remark on the occasion of reading these materials that the idea of absolute or relative secret is not new. This way, Ch. Vibert states that: “Whatever the authors might say, there is obvious that medical secrecy cannot be absolute in all cases. Name the physician who will decline informing the husband about his wife’s illness, informing the environment about an epidemic disease?”

A. Lacassagne places himself in favour of absolute secrecy: “the obligation to secrecy places upon the ones involved the interdiction to reveal it, even when they are called to testify in Courts of Justice.”

Other preoccupations upon secrecy submitted in the article herein are the statements by: A. Lutaud: “Medical secret is not only a moral duty and a sacred obligation for the physician, but the secrecy is also formally enforced by law”; or the rules advanced by Gabriel Tourdes and Ed. Metzquer: “The physician must never reveal what he has come up against during the exercise of his profession: however there are admitted exceptions, there are legal restrictions, debt conflicts, this issue having remained one of the most delicate and controversial.”

“There are so many moral and legal restrictions in favour of the relative secret; the physician is under obligation to keep professional secret, however there are certain cases in which this obligation places one in a difficult position.”

There is certain that, as Henri Contagne stated: “Medical secrecy displays within current practice multiple facets. In the matter of crimes against the State, the law requires revealing the secret, for the other crimes, divulging the secret will only occur in exceptional cases – dictated by the physician’s consciousness.”

The two doctors also worked out a study correlated to the legislation in force. There is this way presented the article 350 in the former Penal Code: “The physicians, the surgeons, the pharmacists, the midwives any other such persons, who “following to be, in line with the nature of their profession, acquainted with and therefore stated as keepers of the secrets they have been entrusted – will let them out – excepting the occurrences when the law asks for such a disclosure – will be sentenced to prison, from one month to six months, and will be fined from 100 lei/Romanian currency to 500 lei.”

In Romania, there were also other legal regulations connected to ethics. This way, the Penal Code of Charles the 2nd article 505, paragraphs1, 2.5 stipulated such regulations:

1. The offence of revealing professional secrets, which was “stipulated by the ancient Penal Code, in the art. 305, has as constitutive elements: 1) the quality of the person acquainted with a secret “in virtue of one’s situation, position, profession or appointment 2) the secret that one of the persons enumerated above is under obligation to keep; 3) the divulging or the revealing deed; 4) the divulgation of the secret might constitute a possibility of prejudice; 5) he who divulges the secret might not be authorized by
law to divulge it, 6) intention of fraud.

2. The first element of the offence represented by the deed of divulging the professional secret is the quality of the person who is acquainted with a secret; the legislator only makes reference to those persons who, in virtue of their position, profession or appointment receive certain confidences from those who need the services falling into their attributions. If a person is entrusted a confidence that however has no direct connection with the situation, position profession or appointment of the person who was entrusted the secret, the offence of revealing the professional secret cannot have been performed.

3. The second element of the offence represented by the deed of divulging the professional secret is the secret itself. Secret constitutes any confidence that one of the persons fitting within the provisions of the art. 505 has found out, only by virtue of the quality, of the position, of the profession or of the appointment he holds, there being obvious the desire of the confidant for his confidence not to be found out by others.

The law refers to the conditions in which we do not speak of professional secrecy (the facts have no connection with the quality, with the profession of the confided person, the information are obtained on private path).

There is afterwards mentioned Max Simon: “when the physician has taken hold on the patient’s spirit, when the former has raked up the most remote and hidden nooks of the latter’s soul, he has contracted against the patient a new obligation, the one of absolute discreetness, which seals within his conscience not only the secrets revealed to him, but also those he has caught glimpse of during his medical investigations.”

Conclusion
History brings forth that in life, the balance inclines more often towards lie than towards truth. Medical ethics is compelled to do its best so as to contradict statistics. When somebody wishes to become physician, pharmacist or nurse, we dare say one is naturally strongly motivated. Sometimes, nevertheless, one’s subsequent activity makes us doubt as to these motivations.

This is the reason why the example of forerunners such the brothers Minovici, Kernbach or I. Stănescu is more than essential.

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