

THE ROLE OF PERSONAL AUTONOMY AND OF THE MEDIA IN ETHICAL AND MEDICAL MALPRACTICE ISSUES

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Abstract: *A thorough approach of all ethical aspects of medical practice is virtually impossible. This is why, the present article begins with a short introduction on a reference system which is the basis of determining the universally valid ethical principle in medical practice; it continues by pointing out issues pertaining to the role of personal autonomy and of the media in the relation between a doctor and a patient. We observe that personal autonomy from the medic's perspective entails his obligation to fully and correctly inform the patient, whereas personal autonomy from the perspective of the patient, who plays a significantly more active role lately, can negatively influence the relation between the medic and the patient and, consequently, the ethics of this relation. Researching the role of media in informing citizens emphasizes the violation of ethical principles by misinformation and incorrect interpretation of malpractice cases, which can lead to a less desired phenomenon, that of street justice.*

Key words: *malpractice, ethics, media, doctor-patient.*

1. Introduction

A certain conduct will be considered as being ethical when it complies with the regulations pertaining to the good living standard of individuals and immoral when people disobey the legal perceptions and do not pursue good and avoid prejudice which can occur because of their actions/lack of actions. *"Probably the highest step of human evolution will occur when what is considered to be illegal will also be immoral and what is seen as legal will also be moral; in other words, this entails that morality is in identity with legality or is closely connected to what is legal and immorality is assimilated with illegality"* (Hotcă, 2017).

We can't discuss ethics without mentioning moral principles and the existence of an interdependence relation between the two; a person with ethical principles is seen as a moral person; however human perception on what is moral and what is immoral is often different. Ethic regulations should be respected so as a person can develop in harmony

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from a personal and professional point of view, as these are the principles which impact the entire society. Thus, it is known that in every field of activity, there is a code of ethics and professional deontology which includes rules, principles of moral conduct which must be respected and promoted, thus ensuring the maintaining of high ethical standards within that specific professional community and the institutions in which they work.

During contemporary times, now more than ever, it seems that people should be more aware of the fact that we all form a single community and the threats to this community, given the current technology which allows for permanent interactions, without any barriers, can turn this interaction into an international one, thus favouring the violation of ethical principles.

The study of ethics points out the best understanding of moral principles by which society hopes to improve its tolerance, compassion, empathy and sensitivity in relation to other people's pain and thus improve the manifestation which places human behaviour in a distinctive era of biological history (Simion, 2010, p.25). The ethical issues, especially those which pertain to the medical field, issues which can easily become of international nature as recent history has proven, have become a common topic of discussion in doctrine and in international practice.

In contemporary society, there are numerous subjects of medical ethics which can't be superficially approached given the fact that they generated controversial disputes and distinctive doctrinal positions. Among these, we mention only those pertaining to euthanasia (Moldovan et al., 2012, p.46), abortion (Bacila, 2016), assisted suicide (Furtună, 2011), treatment of death bed individuals (Buta, 2009), but also newborns with genetic malformations, experimenting new techniques, procedures or medicine on humans, organ and tissue transplant, cloning, genetic engineering, medically assisted reproduction, surrogacy, triage of patients in an epidemic (Rubio, 2022; Burdiles et al., 2021) and the list can continue.

2. Personal Autonomy – An Element of the Reference System of Ethical Values

Inevitably, a question arises, namely which are the true ethical principles which can fundament moral codes? In this context, what can be considered as an essential moral landmark when trying to establish a reference system is the attempt to do no harm.

It is well known that, across history, there were moments when brutality, atrocity, the extreme suffering of people was well emphasized by certain actions or lack of actions by the people. Also, in practice there are situations in which an individual resorts to violence, even if he doesn't directly manifest the intention to use violence, when he is forced to defend himself, thus the self-preservation instinct prevails. This is what is known in legal terms as self-defence.

A short introduction in the matter of the reference system of universally ideal ethical values, considering the numerous behaviour codes, points out a few issues which are the basis of identifying general ideas in establishing a general background of universal ethical values.

Those who have created these guidelines believe (Heifetz, 1996, p.18) that such a background exists and contains:

- a predefined human conduct to follow
- identifying the ethically acceptable human behaviour
- acceptable in all ethical standards
- acceptable in different cultures
- to prove long term benefits both for the individual and society in general, to be in harmony with human nature (Simion, 2010, p. 26).

Additionally, identifying an ethical common language accessible to all its recipients.

Regarding personal autonomy, we can identify general research material and an entirely clear area to project a theoretical construction, from which I have presented a few main ideas.

Personal autonomy should be the second essential factor for defining the reference background, to establish the ethical principles enforceable in society. In other words, everyone is free to act in accordance with its own beliefs if they don't violate the freedom of other individuals and adopt a behavioural conduct which respects the laws in force.

The principle of respecting autonomy reflects a regulation of respecting the capacity of autonomous people to make their own decisions, to not be forced and to freely manifest their will.

In the context of medical ethics, we believe that respecting the principle of autonomy implies, on one hand, a correct, complete and comprehensible information in regard to the patient, who must have all necessary information in order to make an informed decision and, on the other hand, the medical professional must ensure the individual receives sufficient information based on which he can provide consent for care and treatment (Popovici, 2017).

In the matter of medical malpractice, autonomy is manifested from a double perspective: on one hand, the patient's autonomy, which can have an active role in making decisions regarding a certain course of treatment or forgoing treatment and medical care (Law, 2003), and, on the other hand, the doctor's autonomy in regard to the treatment he prescribes, the change of treatment depending on different factors which can influence the decision or even refuse to treat certain patients if the reasons are justified.

The international tendency is to have a different approach regarding relations between the patient and medical professionals, thus concentrating on the patient and his needs and not only on his medical condition (d'Halluin et al., 2007, p.29).

We believe that, considering the current situation of the permanent and perpetual degradation of the general reputation of medical personnel and medical care facilities, this attempt to treat the patient not as a client, but to enforce the principles which create the background of this noble profession is welcomed (Romanian Medical Association, 2016).

A third factor of significant importance would be compromise and cooperation which must exist for people to generally coexist in harmony. In the medical field, this factor undermines the doctor's obligation to permanently perfect his skills to acquire the necessary abilities to exercise the medical act and, on the other hand, there is the correlative obligation of the state to allow and to ensure each medical professionals'

possibility to perfect and perform according to standards. By corroborating the above-mentioned issues, we believe that the patient would have the most advantages.

3. Personal Autonomy in the Ethics of Medic – Patient Relation

The doctor – patient relation is traditionally dominated by the respect and faith of the patient in the abilities and competence of medical professional. On one hand, the doctor must prove to be professional, and respect of principles of ethics and professional deontology and the patient must be convinced he will do all that is humanly possible to help him.

Obedience of the patient is a criterion which acquired a distinctive understanding lately and the causes for this pertain to the present context.

The patient's will to be actively involved in the process of decision making, often without considering the advice of his doctor or requesting second opinions to ensure the diagnosis and the treatment is correct can lead to the improvement of his health.

Patients are becoming more and more informed and more active considering this whole background, they seek the correct treatment which will ease all their anxieties, they seek to have their autonomy respected and to have, as we have previously stated, an active role in making decisions which pertain to their health, treatment and possible surgery.

If previously the doctor – patient relation was based on respect, trust and empathy, in contemporary times, the relation is somewhat more contractual. For this reason, we should point out the rights and correlative obligations of both the doctor and the patient.

Unlimited access to information can do more harm than good. A lot of people have the tendency to diagnose and medicate themselves because of the information they read on certain websites or mass media. They can easily become irritated when the doctor informs them of the risks and consequences which derive from administering treatment which they believe is good for them. What they often leave out is to verify that the information based on which they decide are pertinent, accurate and correct but also effective in the long term, without subsequent constructs. We believe that this approach is not correct, considering that those who provide medical services offer advice based on speciality knowledge and professional competence.

As we have previously stated (Bârsan & Pință, 2023, p.99), judicial practice knows an improvement regarding medical malpractice cases. The question which indirectly appears is to determine the reason for this situation. The answer can be that, in some specific situations, patients do not have blind faith in the medical act, and, for every mistake/negligence of the doctor, they believe the doctor should be criminally liable.

In the medical area, much like in other areas, professionals attempt to avoid interaction with criminal law, thus the medic will only be criminally liable in case he commits a criminal deed during the performance of medical activity.

It is a reality that, lately, the doctor-patient relation has deteriorated and the attempt to identify the cause of this statement would be the people's lack of confidence in the healthcare system and on the other hand, not understanding the specialty language used by the medical professionals; many times, the patient finds himself in the situation of not understanding what the medical act entails because the language employed by

the medical professional is insufficient, minimal, the patients are treated superficially; on the other hand, we have the doctor's fear of being exposed to potential litigation as a result of recommending a certain treatment or surgery.

Of all the deontological aspects contained in the annual reports of the Superior Disciplinary Commission of the Romanian Medical Association, the most frequent are: lack of informed consent or obtaining incomplete consent; failing to check all the boxes of the consent chart, failing to register the exact medical treatment in the patient's chart; a certain course of treatment or medical procedures which are not registered in the patient's chart; first informed consent is not followed by subsequent consent for other therapeutical complications and so on. (CSD, 2012; CSD 2016; CSD 2021; CSD 2022).

4. The Role and Implication of Mass Media in Malpractice Cases

Criminal liability for medical malpractice is not yet sufficiently explored in Romanian criminal doctrine even though the subject produces at least a daily headline in the media and judicial practice in this area increased significantly lately; thus, this issue is deprived of theoretical systematized support in its criminal component, as opposed to its civil law aspects, which are constantly subject to doctrine's preoccupation (Ristea, 2014).

The mass media sources present cases of medical treatment or surgical procedures applied in error or with negligence which have led to the criminal liability of the medical staff. Reflecting this phenomenon in the media also has a positive role, namely emphasizing the citizen's fundamental right to be informed and, by making such cases public, they improve the quality of medical services.

However, the media can significantly contribute to the disinformation and wrong interpretation of litigation in malpractice suits and, therefore, the stigmatization of those involved. The role of the media is important in a democratic society, but it must know certain limits regarding the private life of medical professionals (Dumitrescu, 2019, p. 20). By violating the right to private life, article 8 of the European Convention on Human Rights is violated (Bârsan, 2010, p. 463).

Thus, we believe it is not advisable for the media to present, as sensational, news of a handcuffed doctor which is already seen as „guilty” by the media.

By presenting medical cases in an exaggerated manner, the media influences public opinion and creates an image which emphasizes the deficiencies of the medical system to the detriment of medical progress and success in this area (Dumitrescu, 2019, p.20).

A change in the way we analyse possible cases of medical error, and the accuracy of information is needed. (Pantilimonescu et al., 2019, p. 305). Medical malpractice cases are more or less proven in the media but are presented in such a manner as to lead to a form of social blaming of an entire profession; this adds to a series of other factors which have caused the massive migration of medical professionals from Romania to healthcare systems in other states (Dumitrescu, 2019). The way in which the media reflects certain aspects of the medical facilities from the public healthcare system, by presenting alarming headlines have a significant impact on how the medical profession is perceived in our society, thus people lose the respect that is owed to medical professionals.

The way in which medical malpractice is seen by the media is described in the annual report of the Superior Disciplinary Commission of the Romanian Medical Association, as is the one of 2016, which states:

„We are witnessing an assault on the medical world. TV channels, written media, they all supply consumers with proof of negligence and incompetence of medical professionals throughout the country. We are powerless in this constant deterioration of the reputation of our activity. An awkward image is created, that according to which medical assistance in Romania is in decline, that we lack medical professionals, and the better ones leave the country and choose to practice medicine abroad. We understand that the most mediocre professionals remain in the country. Is that true? However, nowadays, we are witnessing an unprecedented development of innovative techniques in medical practice – medicine based on evidence. A relatively new occurrence – the periodic certification of the license to practice medicine by the Romanian Medical Association. This entails constant and continuous medical training, including from a distance. Medical malpractice insurance appeared, which is now mandatory for those who practice medicine. In short, given all the protection provided to the medical act by the technological development, corroborated with the protection provided by the insurance we are witnessing an increase of patients which are not satisfied with the medical act. This leads to a significant alteration of the doctor – patient relation and the public perception of the medical world.

Despite all these, the quality of the medical act is improving daily, and these better results are uncontested; however, public perception on the medical act has deteriorated in an obvious manner. The public perception, that of a humanitarian mission, which was granted to the medic 50 years ago, has turned into a doctor – patient relation often perceived as a basic performance of a public service of mediocre or questionable quality.” (CSD, 2016, p.2)

5. Instead of Conclusions

We need a well-designed healthcare system, able to discover medical error as soon as possible to protect the patients, as prevention is the simplest course of action and it does not entail victims or guilty parties (Chiriac et al., 2014, p.81) and which does not consider only the liability of the medical staff.

The medical profession should be coordinated by a set of ethical rules so as each medical professional can perform the medical act without any exterior influence, as the priority is the best interest of the patient.

The fundamental obligation of the medic is to grant medical assistance; this obligation is of both a moral and a legal character, as it must be fulfilled by the medic regardless of the situation; it can't be limited to a formal performance of the act.

The medical act must not be influenced, as the medic is the only one who can decide on the way the medical act is performed. Thus, a medical professional will always choose to exercise the medical act in accordance with ethical principles, professional deontology and the current laws and standards in force.

Doctrine and practice are consistent in stating the following existing conditions in regard to malpractice cases: the existence of a professional obligation of the medical professional (the doctor – patient relation); the existence of a certain medical practice standard, including an ethical one which must be respected; a violation of the ethical or professional obligation by the doctor; causing a prejudice to the patient; the existence of a causality relation, a cause – effect type of connection between the violation of the medical professional obligation and the prejudice caused to the patient (Simion, 2010, p.149).

However, street justice has become a phenomenon nowadays in Romania. We do not believe it is adequate for images/recordings of different medical professionals to be shown on TV with the desire to create sensational headlines, as the law should be enforced by those who are tasked to do so, in accordance with professional and ethical standards.

Obviously, without claiming to have medical knowledge, but with the real interest of a legal theoretician eager to explore as much as possible of this subject which is part of the complicated equation of malpractice, I believe that judicial practice will demonstrate, over time, that national law in healthcare will have to undergo certain changes which will protect both the doctors and the patients.

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