Medical Ethics

Oaths, codes, ethics and the essence of medicine: A time for resurrection

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The bond of faith between a patient and his/her doctor is aptly summed up by Charaka: 'No other gift is greater than the gift of life! The patient may doubt his relatives, his sons and even his parents, but he has full faith in his physician. He gives himself up in the doctor's hands and has no misgivings about him. Therefore, it is the physician's duty to look after him as his own.'

The doctor is still viewed as a demi-god and his advice and treatment accepted without questioning. To maintain this trust and faith, which is essential to augment the process of healing, it is incumbent upon physicians to be ethical, honest and up-to-date in their knowledge and approach towards patients under their care.

The rapid strides in medical technology have unfolded complex medical, social, ethical, philosophical, moral and legal issues. It is a sad reality that physicians are allowing technology to de-humanize medicine. The focus has gradually shifted from the whole patient to his systems, organs, tissues, cells and even DNA![1] Several physicians choose to treat laboratory reports rather than the patient in the wider context of his disease and social milieu. The chasm between cosmology, quantum healing and biology has widened.

MEDICAL OATHS

It is customary for medical graduates at the time of their graduation to take the Hippocratic Oath enunciated by the legendary Greek physician Hippocrates. The Hippocratic Oath states:

"I swear by Apollo Physician, by Asclepius, by Health, by Panacea and by all the gods and goddesses, making them my witnesses, that I will carry out according to my ability and judgement, this oath and this indenture. To hold my teacher in this art equal to my own parents; to make him partner in my livelihood; when he is in need of money to share mine with him; to consider his family as my own brothers, and to teach them this art, if they want to learn it, without fee or indenture; to impart precept, oral instruction, and all other instructions to my own sons, the sons of my teacher and to indentured pupils who have taken the physician's oath, but to nobody else. I will use treatment to help the sick according to my ability and judgement, but never with a view to injury and wrong-doing. Neither will I administer a poison to anybody when asked to do so, nor will I suggest such a course. Similarly I will not give to a woman a pessary to cause abortion. But I will keep pure and holy both my life and my art. I will not use the knife, not even verily, on sufferers from stone, but I will give place to such as are craftsmen therein. Into whatsoever houses I enter, I will enter to help the sick, and I will abstain from all intentional wrong-doing and harm, especially from abusing the bodies of man or woman, bond or free. And whatsoever I shall see or hear in the course of my profession, as well as outside my profession in my intercourse with men, if it be what should not be published abroad, I will never divulge, holding such things to be holy secrets. Now if I carry out this oath and break it not, may I gain forever reputation among all men for my life and for my art; but if I transgress it and forswear myself, may the opposite befall me."

The oath provides moral guidelines and a code of conduct to doctors for their acceptable and dignified professional conduct. Over the years, the Hippocratic Oath has become outdated because medicine, moral obligations and social values have changed.Thus the Hippocratic Oath isa mere formality at convocations.To update the Hippocratic Oath, the General Assembly of the World Medical Association, adopted the Declaration of Geneva as a Universal Medical Oath in 1948.

The Medical Council of India (MCI) has also drafted a code of medical ethics, which is advocated to be taken as an Oath at the time of registration of a medical doctor.

It is similar to and embodies the principles enunciated in the Declaration of Geneva. In some universities in India, including the All India Institute of Medical Sciences, New Delhi, graduating doctors are administered the abridged Charaka Oath during the convocation ceremony which states:

"Not for the self, not for the fulfilment of any worldly material desire or gain, but solely for the good of suffering humanity, I will treat my patients and excel all."

It would appear that oath-taking ceremonies have become a mere ritual because medicine is no longer considered a divine task of allaying the sufferings of ailing humanity. It is considered just another profession with all the attributes of commercialism.

THE CONSUMER PROTECTION ACT

Physicians are both morally and legally accountable to society. Doctors are expected to provide efficient and effective medical services to the best of their abilities in a humane and compassionate manner. They are liable under the existing criminal law for acts of negligence. However, the legal procedure is time-consuming, expensive and tedious. The MCI and the State Medical Councils have the power to penalize doctors indulging in professional misconduct and malpractice. Unfortunately, they have failed in their responsibility to impose deterrent punishment on medical practitioners indulging in malpractices. To rectify this anomaly and ensure speedy compensation to aggrieved persons, the apex

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TABLE I. Individuals and institutions liable under the Consumer Protection Act*

Medical practitioners
Private nursing homes
Hospitals catering to both free and paying patients
Doctors/hospitals paid by an insurance company or by the employer for medical care of their employees

* Doctors or hospitals who do not charge any of their patients are exempted from the Consumer Protection Act

court has decreed that medical practitioners shall be liable under the Consumer Protection Act (CPA) 1986.

Despite opposition by the Indian Medical Association (IMA), its academic bodies and members, the services rendered by physicians have been covered under the purview of the CPA (Table I). When a physician or a hospital provides services free of charge to all patients, the CPA cannot be invoked for claiming any damages. Otherwise, acts of negligence (e.g. operating on the wrong patient or removing a healthy organ) as well as 'deficiency in service' or 'substandard service', are covered by the CPA. The Supreme Court, however, conceded the contention of the IMA that summary trial of the CPA should be limited to glaring acts of negligence. Other complex and technical cases should be handled by civil or criminal courts in accordance with the prescribed procedure with the help of expert testimony.

Is it justified for medical practitioners to be brought under the ambit of the CPA?

The medical fraternity believes that the CPA is unjustified because medical service is neither a commodity nor a contract. It is impossible to predict and judge the outcome of treatment due to numerous variables. Also, the cost of medical care may escalate because doctors would indulge in 'defensive' medicine (with unnecessary laboratory tests) and recover the cost of their indemnity insurance from patients. Doctors may also refuse to treat critically ill patients to avoid litigation and the absence of court fee and stamp duty may attract frivolous suits. The lack of expert technical advice may hamper rational decisions and above all, it has been argued that the CPA would erode the doctor–patient relationship of trust and faith, so crucial for promoting the process of natural healing.

The consumer activists, on the other hand, strongly believe that the CPA would make doctors accountable and improve their credibility. Doctors provide services like other professional experts and they ought to have updated medical information and technical competence to handle their patients confidently and efficiently. However, health care has already become a commercial industry. Its cost is skyrocketing because doctors want to recover the cost of medical education obtained from private medical colleges and their investments in the purchase of high-tech equipment.

Most patients do not suspect the competence and technical expertise of doctors. They want a doctor who would listen to them, analyse their medico-psychosocial problems and they should have the option to see the same doctor. Despite the gradual erosion of the doctor–patient relationship, a recent survey in Britain showed that 80% of patients trust their physicians, while only 5% trust politicians. Patients want a competent, caring and concerned doctor rather than a highly evolved technocrat. Even in the litiginous society of the USA, it has been found that most patients sue their doctors because of lack of communication rather than lack of expertise.

Are doctors indulging in malpractice?

It is unfortunately true that some doctors indulge in unfair practices to make a quick buck. Doctors justify their deeds on the plea that they provide at least some 'value for the money'. It is common knowledge that some doctors indulge in 'cut practice'; or get kickbacks for referring patients, undertake unnecessary investigations and hospitalization and perform unwarranted operations. Ultrasonography and computerized tomographic (CT) scans are ordered on minor pretexts and often without justification. It is a common observation that patients are often treated at private hospitals with inadequate facilities and then referred to a government hospital when they are on the verge of bankruptcy and death.

THE ROLE OF CONTROLLING AGENCIES

Neither the medical councils nor the government is exercising any control and the medical system is a 'free for all'. Private hospitals and nursing homes can be opened by anyone, anywhere without any infrastructure and basic life-saving facilities. It seems that only the states of Maharashtra and Delhi have enacted laws to regulate and control the opening of private nursing homes, but even these states are not implementing them. The MCI seems to be mainly concerned with granting recognition to private medical colleges which are mushrooming all over the country.

The MCI should organize continuing medical education (CME) activities at the national level to upgrade the knowledge and skills of practising doctors and introduce mandatory re-certification of medical practitioners every 5 years. They should have full-time council members, constantly upgrade their registers and deal with cognizable cases of malpractice and professional misconduct in a fair and transparent manner. It is a paradox that medical councils have no power to penalize unqualified practitioners who do not even come under the ambit of the CPA!

ETHICAL DECISIONS AND DILEMMAS

Ethical decisions are based on four principles of (i) beneficence, (ii) non-maleficence, (iii) parental autonomy, and (iv) justice.[3] Physicians should be the best advocates of their patients by safeguarding their interests. Florence Nightingale also extolled that the first dictum of patient care is 'do no harm'. The autonomy and wishes of patients and their caretakers should be honoured. The principle of justice demands that we seek the morally correct distribution of resources, ensure cost-effectiveness of therapeutic interventions and support health services for the benefit of the community.[4] Basic and essential health services must be made available to all members of society without discrimination on the basis of habitat, socio-economic status, religion, creed and caste. Ethical decisions should be made by resolving value conflicts by carefully evaluating burdens (suffering, death and disability) and benefits of therapeutic interventions. Medical therapy that prolongs life associated with virtual or total lack of cognition is meaningless. Likewise, when an intended therapy is likely to fail, it is considered futile to continue with aggressive management.

There are a large number of ethical dilemmas regarding withholding and withdrawing life support, 'do-not-resuscitate' (DNR) orders and euthanasia which should be resolved on the basis of sound medical facts and by taking the patient and/or the parents into confidence in the decision-making process.[5,6] Ethics Committees should be established in all hospitals to monitor and maintain the sanctity of all ethical decisions.

PHYSICIAN-ASSISTED SUICIDE AND EUTHANASIA

The Hippocratic Oath states: 'I will give no deadly medicine to

anyone if asked, nor suggest any such counsel'. This has been ordained to maintain sanctity and dignity of life so that doctors' professional capabilities are not abused. Nevertheless, during the course of a terminal illness and in the care of patients with irreversible life-threatening disease, a time comes when it is appropriate for the doctor to stop further attempts to prolong misery and allow death with dignity. Active euthanasia by administration of a poison or by denial of food and fluids is both ethically unjust and legally disallowed.[7] A policy of passive euthanasia by withholding cardiopulmonary resuscitation, life-saving surgery, assisted ventilation, dialysis, vasopressors or expensive antibiotics in terminally sick patients and with the informed consent of the patient and/or the parents is, I feel, ethically justified although it lacks legal sanctity.

OBLIGATIONS TOWARDS PATIENTS

A physician is not duty bound to treat each and every patient requesting his services. However, he has a moral obligation to provide emergency care to his regular patients. In the absence of a pre-existing relationship, the physician is not ethically obliged to provide care to every patient unless no other physician is available in the vicinity in the event of a dire emergency. When he finds himself technically incompetent to handle the medical problem, he can make a referral to an appropriate consultant after discussion with the family. Physicians are obliged to provide competent and humane care to all patients including those with HIV infection. The patients must be handled in a technically appropriate and efficient manner. Unnecessary laboratory investigations, medications, operations and consultations must be avoided. The information obtained during the course of clinical evaluation should be kept confidential by the physician, and should only be released with due consent of the patient or when sought by a court of law.[8] However, when a patient is suffering from a notifiable disease, it should be brought to the attention of the health authority. It is unethical to deny medical care to any patient suffering from any disease.

RELATIONSHIP WITH OTHER PHYSICIANS

The relationship between physicians should be one of cooperation and friendship. They should be willing to provide mutual consultation to each other without any commission. While evaluating a referred patient, it is unethical for a physician to ridicule the professional competence, knowledge and services provided by the referring physician. No consultation fees should be charged from the physician and his family members. The patient along with the proper records should be transferred back to the referring physician on completion of the evaluation. Except for minor self-limited illnesses, physicians should avoid treatment of their own family members as they may lose rationality due to emotional bondage.[9]

The word 'doctor' is derived from the Latin word 'docere', which means to teach. Physicians should transmit the science, art and ethics of medicine to medical students, resident doctors and other members of the team. They have the responsibility to share knowledge and information with colleagues and with patients and their care providers.

EXPERT WITNESSES

Physicians cannot be compelled to participate as expert witnesses but the profession in general has a moral responsibility and ethical duty to assist patients and society in resolving disputes. They must give an honest, objective and unprejudiced interpretation of medical facts. Confidential information relating to patients should not be disclosed unless ordered by the court of law. Physicians are entitled to a reasonable compensation for the time and expenses incurred as expert witnesses.[10]

ADVERTISING

Self-promotion, display of large signboards, self-aggrandizement through media and press, claims for unusual miracle cures are unethical and the physicians indulging in such activities are punishable. A medical practitioner is, however, permitted to make a formal announcement in the press regarding start/change of private practice, change of address, temporary non-availability and resumption of practice.

STRIKES BY PHYSICIANS

Despite the fact that medical services are essential, it is not uncommon for doctors to go on strikes. It is unethical for physicians to withhold medical services through strikes. By virtue of their social position, they should utilize all available lawful means to resolve their problems and grievances. Instead of harassing the patients, they should harness the support of the public to get their just demands fulfilled. The government should bring the medical services under the ambit of Essential Services Maintenance Act (ESMA) to curb the menace of strikes by doctors.

REBATES, COMMISSIONS AND COURTESIES

It is undesirable and unethical for physicians to give and solicit any gift, bonus or 'kickbacks' for referring patients for consultation and investigations. It is also unethical for physicians to receive courtesies, favours and gifts from manufacturers or suppliers of equipment and pharmaceuticals. In view of the onerous, highly technical and complex duties of physicians, their salaries and perks must be substantially raised and brought at par with the administrative and executive services. The disparity between the earning capacity of a doctor in the government sector and private practice must be narrowed to curb unethical commercial practices and arrest the exodus of doctors from government institutions to private nursing homes.

RESEARCH AND PUBLICATIONS

Research must be conducted with fairness, sincerity and with due safeguards to the study subjects. The medical profession should ensure safety and efficacy of new technology and informed consent must be taken before recruiting patients for therapeutic interventions and drug trials. Fraud in research either by plagiarization or quantum jugglery should be condemned and those indulging in such acts should be punishable on grounds of professional misconduct.

The stipulated code of conduct and format should be followed for scientific publications. Plagiarism and incorporating the statements of others either verbatim or by paraphrasing them without giving due credit to the source is unethical and may have legal consequences.[11]

PROFESSIONAL CERTIFICATES

Physicians are expected to issue a number of medical certificates—birth, death, vaccination, sick leave, disability, etc. They should provide correct information. It is common to see false medical certificates issued by physicians for monetary gain or due to political/bureaucratic pressures. It is stipulated by the MCI that any doctor who in his professional capacity signs any certificate or a similar document containing statements which are untrue,

misleading or otherwise unauthenticated, renders himself liable to disciplinary proceedings.

PROFESSIONAL MISCONDUCT

The MCI in its brochure on Code of Medical Ethics has given a list of a large number of acts which can be penalized by the Council for professional misconduct.[2] They include adultery with a patient, conviction by a court of law for moral turpitude, issue of false certificates and statements, contravention of the provisions of Drugs Act or prescription of scheduled poisons for ulterior motives, self promotion through advertisement in the press, refusal of medical aid on grounds of religion or nature of disease and disclosure of the confidentiality of a patient without his approval. The disciplinary action may include punishment as deemed necessary by the appropriate medical council or removal of the name of the practitioner from the register of the council for a specified period of time or altogether depending upon the gravity of professional or moral misconduct.[2]

CONCLUSIONS

Medical practitioners are human beings and not demi-gods. Eminent academicians, medical practitioners and professional bodies should assume a leadership role to launch a national movement against the degradation of traditional moral values and upsurge of unethical medical practices. The declining image of the medical profession needs a moral boost and rejuvenation through a process of soul-searching in the light of existing social realities. There is a need to introduce regular education programmes in the field of behavioural sciences and medical ethics for graduate and postgraduate medical students in all the medical schools of the country.[12] The teachers must serve as role models, infuse and enthuse the qualities of compassion, sensitivity and genuine concern towards patients and their attendants. When practising physicians are more considerate, cautious, honest and ethical in their dealings with their patients, there should be no fear of consumer fora.

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Letter from Chennai

The average letter of referral is a routine thing. Increasingly, the patient is told to go and see so-and-so, and is despatched without a letter of reference. This is hardly surprising in this age when everyone is in a hurry. Sometimes, though a letter is written, it might as well not have been. 'To consult nephrologist.' Presumably any one of the breed. And why? Let the nephrologist find out the name and address of the doctor from the patient, so that the doctor could send him some information about the patient in return.

I was pleasantly surprised to have a patient sent to me with a letter which was not merely informative, but was also a pleasure to read. I quote a couple of paragraphs from it: 'Except for the extreme anorexia, occasional drowsiness and relentless vomiting, she does not exhibit any intolerable itching, bloody diarrhoea, dry and coated tongue, uraemic jactitation, mental obtundation on the brink of stupor as is common in end-stage renal failure. But the sinister rise in blood urea, serum creatinine and serum potassium in a crescendo fashion are danger signals that alert the general practitioner, who has been accustomed to face death at any moment. To bask on the conservative line of treatment is to invite disaster.

'Haemodialysis is imperative to save her life. What is that supercharged deluge of antigen that triggered the cascading antigen–antibody reaction with the connivance of the complement to unleash the infernal soluble immune complex to disrupt this patient's kidney, nature's architectural wonder revered by generations of medical connoisseurs as the watchful paragon in maintaining the milieu interior of the body? Whether the ominous antigen has licked or bitten the glomerulus, basement membrane or matrix focally, diffusely, segmentally, globally, is within the realm of modern, mighty medical institutions to ward off the fatal crescentic nephritis, and hence this letter of reference for your discreet judgement and compassionate care of this forlorn patient.'

Time was when the physician was learned in the arts as well as the sciences. Some of the greatest writers have been medical men; Oliver Goldsmith, Somerset Maugham, A. J. Cronin, to name but a few. While these litterateurs gave up the practice of medicine and became full-time writers, there have been other famous medical men who wrote, in the words of Dr Johnson, 'like angels'. William Osler was one of them. His collection of essays and speeches, *Aequanimitas*, should be mandatory reading for all medical students and doctors. I quote some of his sayings: 'The desire to take medicine is perhaps the greatest feature which distinguishes man from animals.' 'The natural man has only two