

CONTROVERSY

Narco analysis leads to more questions than answers

JAGADEESH N

Department of forensic medicine, Vydehi Institute of Medical Sciences, White field, Bangalore 560 066 INDIA e-mail: jagadeesh_narayanareddy@rediffmail.com

I am writing with reference to the editorial 'Medical professionals and interrogation: lies about finding the "truth"' (1). Investigative agencies may have to keep looking for newer and effective methods of interrogation in an ever-changing crime scenario, but it is not acceptable if these methods violate accepted legal and ethical norms.

It is widely accepted that the correct dose of the so-called truth serum depends on the physical condition, mental attitude and will power of the subject on whom the narco analysis is to be conducted. It is also known that if the subject has used/abused intoxicants and other narcotics, a degree of "cross-tolerance" could occur. In the absence of adequate research that indicates the exact dose for different subjects, the wrong dosage may put the subject in a coma or may even cause death. How then can this procedure be called "humane"? In such a situation, isn't the doctor violating the ethical principle of non-maleficence (above all or first, do no harm)?

A doctor participating in narco analysis is participating in a psychological third degree procedure. Chapter 2, regulation 6.6 of the Code of Medical Ethics (2) clearly mentions that the physician shall not aid or abet torture nor shall he/she be a party to either infliction of mental or physical trauma or concealment of torture inflicted by some other person or agency in clear violation of human rights. If the doctor argues that they are participating because of a court directive, then why are they still taking the consent of the subject? Does that not amount to rationalising a coerced action without the free will of the subject?

A court in Kerala recently pronounced that no court order is required to do a narco analysis. Disposing of a petition filed by the CBI seeking permission of the court, the magistrate said that filing this type of a plea would only delay the investigation. The

court said nobody could stand in the way of the investigating agency conducting tests recognised as effective investigation tools. When the technicalities of the test itself are not clear and uniform, it becomes difficult to accept the stand taken by the court.

If a doctor conducts narco analysis just on the basis of a directive from the police or an investigating agency, isn't the doctor violating the ethical principle of beneficence (all actions only for prevention of harm, removal of harm and for the provision of benefits) when the evidence gathered by narco analysis goes against the subject? Can the doctor be a party to violating established principles of Article 20(3) of the Constitution and Section 161(2) of the Criminal Procedure Code which say that no person accused of any offence shall be compelled to be a witness against himself / herself (that means they are not bound to answer questions to which would have a tendency to expose them to a criminal charge or to a penalty or forfeiture)?

Another argument that is deployed in support of narco analysis is that the procedure is video graphed and audio taped, which is proof that no coercion is being used. At the same time, if such tapes are made public before the judgement, are we not psychologically harassing and punishing the accused before the court has actually convicted them? Is this also not torture? Are doctors getting the accused person's informed consent, before the narco analysis procedure, to the possibility of the videotapes being illegally shown in public? If such consent is not obtained, are doctors justified, legally or ethically, in participating in such acts? Who should be blamed if the results of such tests are used to pressure the judiciary or if the court acquits the accused because the evidence is not acceptable?

References

1. Jesani A. Medical professionals and interrogation: lies about finding the truth. *Indian J Med Ethics* 2006 Oct-Dec; 3: 116-117.
2. MCI. Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. Gazette of India dated 06.04.02, part III, section 4.

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