CONFERENCEREPORT

Seminar on ethical and legal issues in health care organised by FIAMC Bio-medical Ethics Centre, Association of Medical Consultants, 12 November 1995 at Seth G. S. Medical College, Bombay

Dr. S. C. Sheth, inaugurating the seminar stated that in addition to the common problems in medical ethics we need to discuss the current practice of borrowing huge sums from banks to purchase expensive equipment (such as computerised tomography and magnetic resonance scanners) and then indulge in such acts as sharing fees to recoup investment and make a profit.

Medico-legal issues and the community

Justice S. M. Daud (retired from the Bombay High Court) referred to the Consumer Protection Act. Instead of fighting it, he advised the medical profession to work towards ensuring that the judge (who is usually a person who has retired from a high court and cannot always keep up with advances in medicine) is assisted on medical matters by doctors of repute **who must be made to participate in the making of the final decision.**

Justice H. Suresh (retired from the Bombay High Court) discussed the spread of education, the patient's awareness of the need for accountability by the medical profession and the fact that the patient is no longer a supplicant as factors that may lead to doctors being sued.

His experience shows that disputes on technique are better decided by medical peers as judges lack the expertise to opine on them. Disputes on ethics and law concern society at large and fall within the realm of the court of law.

Some issues remain disputatious. Should a severely malformed baby be allowed to die? Is this a matter to be decided by the medical profession or society at large? When a step is likely to cause harm to the subject (in this case the malformed baby), the doctor can be seen not only as abandoning his duty to act for its benefit but as causing it irreversible harm. Judicial decisions abroad have, from time to time, iterated the principle that under certain circumstances the doctor is right in not interfering with the process of nature.

Breach of the principle of informed consent or express agreement and lack of reasonable skill and care will certainly make the doctor liable to judicial action. An example of express agreement is a promise by a plastic surgeon to sculpt a young woman's nose to a defined shape. If he fails to do so, he will be liable to action.

In response to a plaint that courts place the onus of proving innocence on doctors, **Justice Daud** emphasised that in the absence of a properly maintained medical record, a copy of which is supplied to the patient, this is inevitable. How is the complainant supposed to prove his charge when all the documentation and expertise is with the doctor alone? Even if documents are supplied to the patient, there are certain situations when the doctor must prove his innocence. One such is negligence whilst the patient is under general anesthesia. In this situation the patient cannot be aware of what is happening or prove that reasonable skill and care were not exercised. It is up to the doctor to prove that there was no negligence.

When asked what a doctor should do when he is commanded by his superiors to commit a wrong, **Justice Daud** had no hesitation in recommending that the dictates of conscience must take precedence over the need to behave in a disciplined manner.

Dr. Chicot Vas (FIAMC) addressed areas where the law lags behind ethics. One example is when a person wills that his corpse be used to further medical research. Whilst his decision on distribution of material assets is respected by law, the disposal of his body depends wholly on decisions made by his heirs. His own, expressed, will is irrelevant. Another example is the compulsion on doctors in public hospitals to report child abuse whilst doctors in private clinics are under no such obligation. The medical profession needs to work with members of the Law Commission and other judicial and parliamentary bodies to get such anomalies corrected.

Relevance of the code of medical ethics of the Medical Council of India

Dr. Lalit Kapoor, [illegible] lack financial inde-

ethics is a way of life and cannot be taught but can only be passed on as from teacher to student. Since the law cannot reach where enforcement cannot follow, ethics begins where law stops.

He referred to several reasons for the erosion of the relevance of ethics: a metamorphosis in society with greed and materialism becoming the order of the day; depersonalised relationships; the fact that medicine has now become an industry; the advent of five-star corporate hospitals with profiteering as the goal; over-investigation, over-medication and over-operation. He also referred to the abject failure of medical councils and autoregulatory mechanisms.

He felt that the existing code of ethics formulated by the Medical Council of India has become outmoded and needs revision. He provided the following examples:

The clause on advertising by doctors has become irrelevant and cannot be enforced. The dividing line between the education of the public and soliciting patients is very fine and indistinct. The code is being observed more in the breach.

Rebates and commissions should not be unethical. These are a fallout of the general scenario in society. Since the prohibition cannot be implemented, it has become irrelevant.

The clause requiring free treatment to all doctors and their near relatives is likewise irrelevant as most doctors do not subscribe to this view.

In summing up, he felt that the code of ethics is not worth the paper on which it is written.

More important than tinkering with ethical codes and such matters is to tackle the issues at the root of the rot in medicine. The medical council acts are badly drafted and seriously deficient with too many constraints on its members. They permit fraudulent elections. They have made it possible to set up 'teaching shops' which are the mothers of unethical acts. Politicians and bureaucrats interfere in the functioning of these

pendence. They have no powers to act against unqualified 'doctors'.

Management of severely malformed infants

Dr. Vasant Talwalkar (pediatric surgeon) found considerable insensitivity in doctors dealing with such infants. A senior consultant told the parents of a severely malformed baby: 'Yeh to khota rupia hai. Isko phenk do.' (This is a dud rupee. Discard it.) The All India Institute of Physical Medicine and Rehabilitation at Haji Ali will not treat a child with incontinence though such treatment is part of their mandate. Dr. Talwalkar cautioned doctors against carrying their prejudices to their consulting rooms and inflicting them on patients and their families. Instead, we should offer the best possible treatment based on the wishes of the family, accommodate their prejudices and help them overcome these.

He also bemoaned the fact that ante-natal diagnosis becomes anti-natal diagnosis when a malformed fetus is detected!

Allocation of scarce resources - social and ethical considerations

Dr. Thakkar (orthopaedic surgeon) pleaded for the use of triage. Social and political pressures must be overcome to ensure that individuals who can be salvaged and sent back as productive members of society get preference when facilities have to be rationed.

We should use our resources optimally and do everything we can to avoid wastage. Accountability and discipline can go a long way in ensuring this. The tendency for heads of departments to create fiefdoms, duplicating equipment and facilities must be curbed. Centralisation will go a long way in ensuring efficiency.

Ethics and dental practice

Dr. Porus Turner (consultant dental surgeon) felt that dentistry, like medicine, has changed from a profession into a business. There are now good businessmen and those not-so-good. When large sums of money flow in, irregularity in dealings is inevitable.

He divided unethical practices into:

poor quality of service - inevitable when you see large numbers of patients in limited time and perform more operations than you can possibly handle;

cheating as when the patient is charged for crown and bridge made of gold and is provided those of an inferior metal or inserting a dental implant when it is not really needed;

negligence as when a dental implant is driven into the maxillary sinus or into the inferior dental nerve;

dental politics as exemplified by running the other dental surgeon down;

advertisement in the form of posters, publicising awards which have been won thanks to carefully cultivated contacts in the corridors of power or awards from non-recognised groups.

In response to a question whether attendance at a two day course on a specialised branch of dental surgery is adequate to label oneself a specialist, Dr. Turner stated that such a course merely put you on the track. You must now educate yourself and develop your own expertise before you can call yourself a specialist. One way of doing so would be to treat the first 50 or 100 patients free of cost and documenting your results.

General Eustace D'Souza narrated an episode where a soldier already on the dental chair was hastily moved off it to make way for the Defense Secretary who had suddenly decided he needed treatment.

Conclusion

Dr. Chicot Vas told the audience of the plan drawn up by FIAMC for holding a series of meetings on various ethical dilemmas faced by doctors. It is hoped that a consensus opinion can be reached at each meeting and recommendations drawn up. On the basis of such recommendations, FIAMC and other bodies can approach the Law Commission to improve existing statutes and, if necessary, get additional laws passed to the mutual benefit of patients and doctors. He welcomes participation by all concerned individuals and groups.

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Ethics in health care - a report on the XXII Annual Meet of Medico Friend Circle, Wardha 27-29 December 1995

Introduction

There is a widespread feeling that there has been a general erosion of ethical standards even in professions which have been considered 'noble'. This has prompted a soul searching exercise to understand the problems involved. Such an exercise would help since the influence of ethical conduct in positive terms is not contained or concerned within some exclusive sections and select groups but is relevant to the entirety of society. The moral basis for the unity and stability of society demands that ethical restraints must operate not only in respect to individuals but also organised groups. The intention here is not to blame any section of the society but to appreciate the dilemmas that even concerned and sensitive people face.

Broad issues

Anant Phadke delineated the broad issues for discussion: the ethical duty of the doctor towards patients, fellow doctors, society in general; ethical code to be followed by health researchers; ethical code for drug companies; issues in health education and health policy making.

Amar Jesani provided a global picture of the changing nature of medical ethics. Medical ethics, as understood today, is different from what it used to be prior to the 19th century. The formation of the General Medical Council in Great Britain, which was responsible for making medical practice professional and for regulating the profession from within, was a major step. It was at this time that the Hippocratic oath came to be accepted by many, including the General Medical Council, which penalised those who violated it. Registration with the Medical Council was made a pre-requisite to practice.

The dominant principles of medical ethics at this time were: (a) do no harm (non-maleficence), (b) do good to your patients (beneficence), (c) autonomy of the patient has to be respected, (d) doctors' responsibility to society as consisting of more than that mere treatment of the patient.

With the adoption of the welfare state in the 1940s the issue of what kind of health care should be provided became significant since the code of ethics is by and large silent about issues such as the