

ETHICAL AND LEGAL ISSUES IN MEDICAL PRACTICE

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ABSTRACT

Rapid developments in the medical field in the last century have revolutionized the field of medical practice. It is now possible to diagnose diseases faster and more accurately using advanced diagnostic techniques. Surgical treatment has moved towards less invasive modes of management with lesser morbidity and faster recovery. Among all these developments, the medical profession in India is at crossroads facing many ethical and legal challenges in the practice of the profession.

Key Words: *Medico legal issues, non maleficence, fundamental values*

Introduction:

It is presently a solidly settled conviction that lawful and moral contemplations are basic to clinical practice in the making arrangements for the consideration of the patient. With the advances in clinical sciences and developing complexity of the lawful system in present day culture as well as expanding consciousness of basic freedoms and changing moral standards of the local area at large, doctors and other medical services laborers the same are currently much of the time trapped in troublesome predicaments in numerous viewpoints emerging from day to day practice. Models are bounty, for example, the obligation to regard informed assent, truth-telling, break of privacy, exposure of clinical mistakes, apportioning of scant wellbeing assets, biomedical examination, organ gift, and so on. Moreover, there is likewise developing tension both inside the clinical calling and locally in regards to

expanding patterns of grumblings and claims against specialists. From the unpleasant experience of many specialists who were taken part in objection or claims previously, a large number of them had come about because of falling flat of their PCP patient correspondence expertise or deficient capacity to fathom and determine quandaries in clinical settings. Clinical morals has formed into a very much based discipline which goes about as a "span" between hypothetical bioethics and the bedside.¹ The objective is "to work on the nature of patient consideration by recognizing, examining, and endeavoring to determine the moral issues that emerge in practice".² notwithstanding our ethical constraints, specialists are likewise limited by regulations and official guidelines which structure the legitimate system managing clinical practice. It is currently an all inclusive agreement that legitimate and moral contemplations are intrinsic and indivisible pieces of good clinical practice across the entire range. The disciplines of regulation and morals in clinical practice cross-over in numerous areas but each has its exceptional boundaries and particular concentration. The wellbeing area in India has seen a significant change with medical care turning into a beneficial area drawing in financial backers from different and shifted foundations with productive thought processes. There is additionally a charge that the act of current medication is turning out to be more indifferent, and

with the rising reliance on innovation, the expense of treatment likewise rises. Most grown-ups have the legitimate right to pursue their own medical care choices. Be that as it may, chronic weakness can endanger individuals' capacity to practice their legitimate freedoms.

Safeguarding these rights requires advance thinking and planning. Sudden or chronic illness can cause profound weakness and confusion, which makes people vulnerable and can lead to the unwilling loss of control. Conducting personal affairs, making wishes known, and making sure those wishes are respected may be difficult for people who are physically or mentally impaired. Nevertheless, adults of any age can take steps to protect themselves against losing control of their health care decisions, and such steps are especially important for older people.

Some Legal Terms Related to Health Care

Legal capacity (competency): The right and ability to manage one's own affairs (usually starting at age 18 in most states).

Legal incapacity (incompetency): The inability to manage one's own affairs because of injury or disability, as determined by a legal proceeding.

Clinical incapacity to make health care decisions: The inability to understand the significant benefits, harms, and alternatives to proposed health care and to make and communicate a health care decision, as determined by a qualified doctor or other health care professional.

Advance directives: Documents or other recordings such as a living will or a health care power of attorney that communicates

a person's wishes about health care decisions.

Living will: A document, sometimes called a medical directive, that expresses a person's wishes regarding future medical interventions and end-of-life care when the person no longer has the capacity to make health care decisions.

Health care power of attorney: A document that legally appoints someone else to make health care decisions on a person's behalf in the event the person no longer has the capacity to make health care decisions. The person appointed may be called a health care agent or proxy, health care representative, or other name depending on the state.

For health-related personal matters, the key planning tool is a health care advance directive, which includes a living will, a health care power of attorney, or both. For financial and other property matters, the key legal planning tools are a financial power of attorney, a will, and in some cases a revocable trust (or living trust). Together, these legal tools help direct and manage property and health care decisions in accordance with a person's wishes when the person no longer has the ability (capacity) to make decisions.

Health care advance directives should reflect thoughtful discussion between the person and people close to the person about the person's values, priorities, and preferences during serious illness. The effectiveness of an advance directive is directly proportional to the thoroughness and thoughtfulness of the discussion on which it is based. State laws vary concerning advance directives, but all 50 states permit people to express their wishes

regarding end-of-life treatment in the event of a terminal illness or injury and to appoint someone to communicate for them in the event they cannot communicate for themselves.

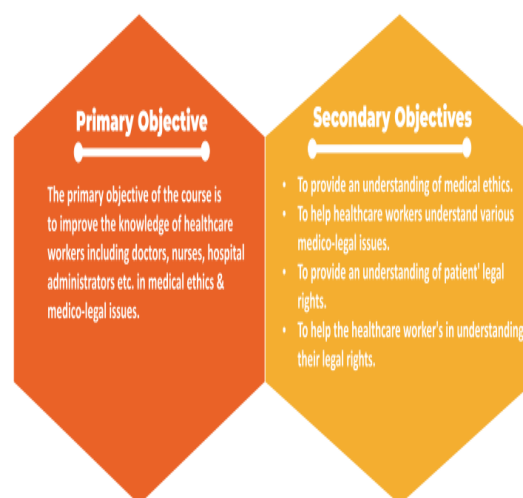
The health care documents can be prepared without an attorney. However, an attorney may be helpful, especially if a person's wishes are complex or family members are not likely to be in agreement.

The medical profession that was once considered noble is now considered along with other professions in the liability of paying for damages. The patients who wanted monetary compensation for the alleged medical negligence used to resort to the civil courts. This was the only avenue earlier that used to be a lengthy process with its detailed procedural formalities. The confusion about the inclusion of doctors under the Consumer Protection Act, 1986 has been laid to rest by the landmark decision of the Supreme Court in 1996 that puts the services of doctors for consideration under the purview of the Consumer Protection Act.

PUBLIC HEALTH FOUNDATION OF INDIA (PHFI)

PHFI is a public confidential drive that has cooperatively developed through discussions with various electorates including Indian and worldwide scholarly community, state and focal legislatures, multi and bi-sidelong organizations and common society gatherings. PHFI is a reaction to review the restricted institutional limit in India for reinforcing preparing, examination and strategy improvement in the space of General Wellbeing. The Preparation Division at PHFI has been executing in excess of 25

Limit Building Projects that mean to redesign the information, abilities and center capabilities of medical services experts in clinical circumstances and different general wellbeing spaces. We have prepared 32,000+ Medical services Experts, of which more than 10,000 are subsidiary to the Public authority Area. We have an organization of 108 Public Specialists, 621 Employees, 173 Onlookers, 600+ Instructional hubs in 121 Urban communities, 28 States & Union Regions across India.



In the last century, there have been a number of developments in medicine that have revolutionised the field of medical practice. This has made it possible to diagnose diseases faster and more accurately. However, as new treatments are introduced and the field changes, healthcare professionals face new legal and ethical challenges. This blog will provide you with an insight into the issues involved in working in the healthcare sector.

Fundamental Principles in Medical Ethics

Clinical morals is an applied morals which includes looking at explicit disputable issues, for example, early termination, break of classification, end-of-life care, proportioning of scant clinical assets. The goal is to attempt to recognize the issue concerned, dissect it with contemplated thoughts and contentions and show up at a practical and ethically satisfactory goal for it. In the domain of clinical practice, it is hard to hold decides or rules that are outright considering the numerous factors that exist with regards to clinical cases as well as new issues that emerge because of changing conditions and conviction. By and by, throughout the long term, there are sure essential rules that have won an overall acknowledgment as guideposts in the ethical examination of moral issues in medication. The essential rules that apply for the most part to medication or medical services in general are: (a) regard of patient's independence; (b) the standard of nonmaleficence, i.e., the obligation to stay away from damage or injury to patients; (c) the guideline of usefulness, i.e., the obligation to accomplish something beneficial to your patients, ease their aggravation and enduring and to save life if possible; what's more (d) the standard of equity and act reasonably. The qualities that envelop the four central standards in clinical morals are plainly obvious. They are viewed as specialist's by all appearances obligations to the patients and society. It is vital for a specialist to consider every one of them when they are relevant to the clinical case viable. Not rarely, when at least two standards apply, they might be in struggle. For example, the choice to work on an instance of intense a ruptured appendix includes something like two contending at first sight obligations

with respect to the specialist. Toward one side, the specialist is obliged to give the best advantage to the patient by playing out a prompt appendectomy. At the opposite end, medical procedure and general sedation convey chances and the specialist is under the commitment to try not to hurt the patient. The goal took on should base on a harmony between the requests of the contending standards by figuring out which conveys more weight in the specific case. On account of an infected appendix, a for the most part acknowledged judicious math holds that the patient is in far more serious gamble of mischief from a cracked supplement in the event that the specialist don't act, than from the activity and sedation in the event that the specialist continue to a medical procedure.

What are the differences between legal and ethical issues in healthcare?

The healthcare sector is governed by sets of rules, regulations, laws and ethical standards. Laws are designed to protect individuals when making decisions about their healthcare. In addition, they also set out the responsibilities of healthcare professionals.

However, there are differences between legal and ethical standards. Whilst legal standards are set by governmental laws, ethical standards do not necessarily have a legal basis. Legal standards are useful as they help people to understand what they are not allowed to do, whereas ethical standards are primarily based on human principles of right and wrong. With legal standards in place, authorities are allowed to enforce rules when people do something

illegal, whereas ethical standards lack such regulation.

Aside from the nature of both concepts, there is also a difference in how they are applied. Legal actions are applicable to any individual present within a state or country that implements that particular set of laws. On the other hand, ethical rights are considered a voluntary and personal act of an individual based on their perception of right and wrong.

What are the legal and ethical issues in healthcare?

The main legal issues in the healthcare system relate to medical negligence, informed consent and confidentiality. Here are a few legal issues that affect the healthcare system on a regular basis:

- **Antitrust issues and ACOs** – Accountable Care Organisations (ACOs) consist of groups of doctors, hospitals and other healthcare providers, who collaborate voluntarily to provide coordinated high-quality care to patients. Among the several programmes put forth by the healthcare laws that aim to increase healthcare quality and lower costs, the most recognisable is the accountable care organisation programme. The ACOs require healthcare providers to work closely to achieve coordinated care, reduced costs and increased quality.
- **False claims and whistle-blower suits** – This refers to the National Health Service (NHS) process of detecting healthcare fraud and abuse perpetrated by dishonest physicians,

healthcare providers and suppliers. Typically a nation's government is not sufficiently staffed to effectively detect the enormous volume of claims submitted to the governing healthcare bodies. Whistle-blower cases have proven to show that healthcare providers and suppliers have found many ways to defraud the government. They can help governments of a country to recover money that was paid as a result of fraudulent claims. Thus, they play a key role in the fight against healthcare fraud.

- **Healthcare system malpractice and tort reform** – The main reason why governments work on reducing medical malpractice and have implemented tort reform is to reduce expenditure on unnecessary healthcare services. Besides reducing overall health costs, these reforms can also lead to a decrease in global malpractice risk.

Ethical issues often involve the topics of confidentiality, informed consent and patient-doctor relationships. Below are some of the ethical issues that commonly arise in the healthcare system:

- **Patient confidentiality** – A confidential relationship between physicians and their patients is essential. Confidentiality helps create a setting of trust in which a patient can share their private feelings and personal history, enabling a physician to form a diagnosis. Patient information should be available only to the physicians and other healthcare personnel as required. A healthcare worker may be violating a patient's confidentiality by disclosing

medical information to others who should not have access to it.

- **Informed consent** – Informed consent means providing an in-depth understanding of the risks and benefits of a treatment to a patient. This allows the patient to decide whether or not they wish to undergo a procedure. Informed consent is based on the principle that patients should have autonomy over the treatment they receive. Healthcare providers should have a document providing proof the patient has full knowledge of the risks, benefits and possible consequences of a particular treatment.
- **Physician-assisted Suicide (PAS) and euthanasia** – Euthanasia refers to the process of a deliberately ending a patient's life in order to relieve them of suffering. It is illegal in most countries but is still a hotly debated ethical issue surrounding whether it should or should not be legalised. PAS is the practice of providing a competent patient with a prescription for medication that will end their life. In this case, the patient would have to self-administer the medication, directly or through a machine.

Every day, patients, families and healthcare professionals face ethical and legal decisions concerning medical treatments, practices, hospital management and other matters that arise in the healthcare industry. Obtaining a degree in the field of healthcare and its management can enable you to become aware of the legal and ethical healthcare issues that you may face in your career. If you are interested in getting a good grounding in the healthcare industry, then enrol onto the

HND Healthcare Practice for England programme offered by St. Patrick's London.

Legal & Ethical Issues that Health Care Professionals Face:

Health care professionals practice in an environment that is complex, with many regulations, laws and standards of practice.

Confidentiality

Confidentiality is both an ethical and a legal issue. Keeping information about a patient confidential is a way of showing respect for the person's autonomy; releasing information can damage the patient.

Relationships

Relationships with patients, particularly sexual relationships, are forbidden by both the medical and nursing code of ethics. Such actions are considered serious misconduct and can result in expulsion from the profession and losing the license to practice.

Malpractice

Health care practitioners of all sorts face the risk of being sued for malpractice. A lawsuit may be brought from an injury related to surgery, defective equipment or medical products, care that was omitted or a deliberate act that caused harm to a patient.

Consent

Patients must provide informed consent for treatment to be legal. A surgery performed without proper consent is generally considered assault, according to a 2009 article in the "Internet Journal of Surgery." When treating an adolescent, the health

care professional faces potential conflict between ethics and the law in certain situations.

HIPAA:

On August 21, 1996, the U.S. Congress passed the Health Insurance Portability and Accountability Act (HIPAA). The primary goals of the act are to improve the portability and continuity of health-care coverage in group and individual markets; to combat waste, fraud, and abuse in health-care insurance and health-care delivery; to promote the use of medical savings accounts; to improve access to long-term care services and coverage; and to simplify the administration of health insurance.

Summary

One must carefully follow all state, federal and individual practice rules and laws while performing daily duties and must also follow the AAMA Code of Ethics for medical Legal and Ethical Issues in Medical Practice, Including HIPAA assistants. It is an important part of duties to help the doctor avoid malpractice claims—lawsuits by the patient against the physician for errors in diagnosis or treatment.

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