

Chapter 61

Confrontation of Human Rights in Daily Clinical Situations

Anna Konieczna

University of Applied Sciences in Nysa, Poland

Przemysław Słomkowski

Ministry Hospital in Bydgoszcz, Poland

ABSTRACT

The chapter concerns human rights as they are enacted in daily clinical situations. It invokes basic documents describing human rights as well as legislative acts dealing more specifically with the rights of doctors and patients. Basing on the theoretical legislative background, the text presents cases of conflict and misunderstanding between various participants of clinical situations. The authors are mainly concerned with the clash of values and beliefs concerning terminal care treatment of ICU patients and with the issue of patient's autonomy and self-determination. The concepts of informed consent and moral distress are explained and visualized with real life examples.

INTRODUCTION

The issue of human rights has been the topic of numerous social discussions and the subject matter of many documents proclaimed in different spheres of life after the Second World War and later. Some of the most recent documents narrow their focus and discuss the concept of human rights with reference to one particular milieu or a specific profession. Following this trend the chapter specifies its focus and talks about the way human rights are being enacted in clinical situations (that is situations involving patients and medical care providers: physicians, nurses or pharmacy staff). The text invokes selected legislative acts describing the rights of the patient and the rights and duties of the medical staff, and presents sample situations in which these particular rights and duties come into conflict. The discussion here presented draws from earlier research studies as well as from two interviews realized on our own and involving physicians as respondents. (The physicians are referred to as dr Y and dr Z later in the text).

At the very start of the chapter it needs to be admitted that sometimes it is difficult to draw a clearly-cut borderline between what constitutes rights, privileges and duties. Moreover, the different rights are

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not always certain to be ascribed to just one of the parties: the patients or the medical staff. For example, making the decision to withhold terminal care treatment, which is allowed within some legislative systems, may be considered the patient's right or the health care providers' right, depending on the perspective taken (see the discussion later in the chapter). The point is that patients and medical staff are in constant cooperation and interdependence. What is the right of the patient may for example invade in some way the right of a doctor. The interdependencies may be sometimes quite complicated. The patients' rights may in some cases be the source of doctors' moral dilemmas, or may stay in contradiction to particular doctors' beliefs. The approach adopted in this chapter consists in taking the perspective of a third party, not involved with either of the groups being discussed, and not favouring any particular opinions. Ethical issues are often intricate, that is why it might be more beneficial to discuss the complexity of certain problems rather than argue for particular opinions. In fact, if there is a problem involving human rights, it usually concerns not just patients, but also to various extent the medical personnel. That is why this chapter quotes documents applying to both doctors and patients. What also needs to be emphasized is the fact that for obvious reasons the discussion presented here must be limited. That is why only selected clinical problems are described. The text most directly refers to the situations concerning terminal care and to the issues of patient's autonomy.

HUMAN RIGHTS DOCUMENTS

Numerous international acts describe fundamental human rights. Among these acts there can be enumerated, as the most important ones, the Universal Declaration of Human Rights (1948) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), whose text has been amended several times throughout the years. The Universal Declaration of Human Rights enshrined the concept of human dignity. It also provided the background for the developments of universal standards concerning the treatment of human beings based on our common responsibilities as society members. The values recognized by the Universal Declaration of Human Rights are "the inherent dignity" (art. 1) and the "equal and unalienable rights of all members of the human family" (preamble). Basing on the above cited statements concerning human dignity and equality, the concept of patient rights was developed. As subsequent legislative documents proliferated, declarations concerning more specifically the rights and privileges of a patient appeared. An example here could be the European Convention on Bioethics announced in 1997. This and other similar conventions were intended to stand on the side of ethics and protect the rights and the freedoms of people. An important role within this movement was played by World Health Organization (WHO) and World Medical Association (WMA), organizations which have proclaimed numerous important documents dealing with medical health care and patient rights. Among the many documents announced, the one that deserves special attention is the Declaration on the Promotion of Patient Rights in Europe (1994). The document states that patients should be treated with dignity and respect which is owed to all human beings. That also means that they are entitled to be provided with access to medical care and to be offered safe clinical services, that their autonomy and privacy are to be respected, and that confidentiality of information concerning individual patients should be the norm.

As the document states, the development of the complexity of health care systems as well as greater hazardousness of many of the medical treatments result in the fact that medical practice becomes more impersonal and bureaucratic, but at the same time more dehumanized and mechanical. The document

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