



Unethical medical practices and law: An effort to expose the corruption in medical field

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Abstract

Medical practice is of dignity and honour and is expected to serve the suffering humanity be it rich or poor, caste or creed. After having professional degree the doctors are supposed to uphold the moral values in discharging their duties. Patients treat doctors none other than the GOD.

However the things have reversed in the recent past and the emphasis is on making money through corrupt practices. The important facet is the responsibility of government and the MCI which in today's times is far away. The system laid down is neither followed nor strictly adhered to. This has resulted free hand to Pharma companies, Path Labs and the Doctors to play foul. The sole purpose is to amass the wealth at the cost of poor suffering patients.

Everybody knows the medical practice is sacred job which is raptly attached with human emotions and sentiments, where earning money is facile task, but it is totally different. It's surprising to know that the doctors for their own monetary benefit identify some medical stores to procure the prescribed medicine written by the doctor at sky shooting cost.

Keywords: right to health, medical ethics, unethical practices, government role, patients right, duties of doctors

1. Introduction

Code of medical ethics of the medical council of India

Medical practices in recent times are not the same as they were decades ago. Improper management of technology has led to several new diseases and that has given right to the Doctors to practice unethically. This profession has lost its sacredness, and many types of unethical practices are being carried by our Doctors to fool their patient for their economic gains. To put this situation in control and to bind the Doctors with ethics, the medical council of the India, with the approval of the central government has made the following rules relating to the professional conducts, Etiquette and Ethics for the registered medical practitioners.

The Medical Council of India was first established in 1934 under the Indian Medical Council Act, 1933. The Council was later reconstituted under the Indian Medical Council Act, 1956^[1] that replaced the earlier Act. It regulates standards of medical education, permission to start colleges, courses or increase the number of seats, registration of Doctors, standards of professional conduct of the medical practitioners. Since then many amendments have been made in the council by the Government of India.

2. International code of medical code of ethics

After the approval of the Declaration of Geneva, the II general assembly of the World Medical Association analysed a report on "War crimes and Medicine". After that WMA appointed another study committee to prepare an International Code of Medical Ethics. The International Code of Ethics was adopted in 1949 by the General Assembly of the World Medical Association at London. The main goal of this code was to establish the ethical principles of the physicians worldwide, based on his duties in general, to his patients and to his

colleagues^[2].

3. Principle of Medical Ethics

The main ethical principles (modified from the principles of Bio-Ethics as described by Beauchamp and Childress, 1977)^[3] to guide the medical fraternity in treating the patients are:

1. Autonomy (The right for an individual to make his or her own choice.)
2. Beneficence (The principle of acting with the best interest of the other in mind.)
3. Non-maleficence (The principle that "above all, do no harm," as stated in the Hippocratic Oath.)
4. Compassion (the physician is expected to be compassionate towards the patient)
5. Justice (A concept that emphasizes fairness and equality among individuals.)

3.1 Autonomy

According to Judge Cardozo's words: "Every human being of adult years and sound mind has a right to decide what shall be done with his own body and a surgeon who performs an operation without his patient's consent commits an assault Article 351 of (Indian penal code) for which he is liable^[4].

3.1.1 What is informed consent?

The concept of informed consent came a few years back only^[5]; it says it is medical practitioner's duty to inform patients about all the consequences of the treatment before starting any procedure. Doctor's primary and foremost duty is to give full information relating to the treatment and test and this process and known as the Informed consent. Informed consent is based on the rule of right to know (Article 21 of Indian Constitution) and it is doctors moral and legal duty to explain

all the risk, nature of treatment, Chances of survival, Diagnosis, Alternative treatment in the language in which the patient can understand, and make a decision.

Samira Kohli vs Dr. Prabha Manchanda & Anr on 16 January [6], 2008 in this case it was held that any consent during the procedure is not regarded as informed consent. The consent which was obtained during the surgery was not according to the norms of the medical council (consent should be free and informed and in written for any surgery).

Dr. Shailesh Shah vs Aphraim Jayanand Rathod on 8 May, 2003 [7] In this case Medical practitioner did not take the consent for the surgery and the consent which was obtained was not appropriate. According medical council of India any operation or repetition of the procedure cannot be done without informed consent and written form of consent is mandatory. It is a case where Dr. was deficient in rendering service to complainant.

3.2 Beneficence

A medical practitioner is foremost duty is to alleviate the suffering, and reduce the pain of the patient. His work should be in an interest of the patient's well-being and to enhance the quality of his patient's life.

3.3 Non-maleficance

A physician should always work in good faith of his patient. He should not harm his patient in any case.

Good Faith has been defined under S. 52 of the IPC [12]: "Nothing is said to be done or believed in 'good faith' which is done or believed without the due care and attention."

Therefore, the meaning of the expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the care sought to be exercised. So, before a person proposes to make an imputation, he must first make an enquiry into the factum of the imputation which he proposes to make. It is not enough that he does just a make-believe show for an enquiry. The enquiry expected of him is of such a depth as a reasonable and prudent man would make with the genuine intention in knowing the real truth of the imputation. If he does not do so, he cannot claim that what he did was bonafide i.e. done in good faith [8].

3.4 Compassion

The physician is expected to be compassionate towards the patient. He should always treat his patient with empathy and treat him with respect and care which he deserves. He should not be harsh to his patients.

3.5 Justice

Justice means fair distribution of the resources, which are available to the doctor. It says the patient whoever goes to doctors should treat with equal care and respect.

- a. Work for the benefit to the patient.
- b. Improvement in the patient's life.
- c. Time of the treatment.
- d. Patients Interest.

4. Doctors Duties/responsibilities/Accountability towards their patients

A good doctor will always understand the situation of their

patients and will show empathy to patients. It is an implied contract between doctor and patient, patient should always understand that doctor will always put their patient first. Doctors hold the most respected place in the society and that is the reason society expects more from doctor and it increases their responsibility. Medical ethics of this profession says that, doctor's main priority is the patient and he should never forget his duty to serve the society either individually or collectively. Being a doctor, it gives certain rights and privilege; in return doctor is expected to fulfil all the duties and responsibilities the society expects. Law imposes a duty on every person to protect the right of others to save the rights of the patients, the Indian Medical Council (Code of Ethics) have laid down the principle of the medical practice and standard of care, professional conduct, etiquette and ethics these are as follows: Duty to care and diligence of suitable doctor: it becomes doctors primary duty to give reasonable care to the patient who has approached him for the treatment and for the same they entered in to an implied contract.

4.1 He should possess knowledge of the particular field

According to consumer protection law court says a person who has specific knowledge of the particular field or have education to be expertise in particular field, that person is capable to judge what and how things can be handled in an emergency situation.

4.2 Standard procedure for the treatment

A medical procedure course of action which decides what treatment should be given to the patient. A standard procedure of treatment Includes determining, measuring, or diagnosing a patient condition to achieve a better and fast result in health care.

4.3 Standard of not to experiment with the patients in any situation

In medical field it is strictly prohibited to experiment with patients for the test of certain medicine and treatment with the patient, without knowing the consequences of the treatment and medicine.

4.4 Anticipation of expected risk involved in the treatment

It is doctor's duty to confirm all the aspect of the patient's health and reassure about the risk involved in the treatment. He should always prepare for the anticipated risk with the procedure.

4.5 A doctor should never exaggerate about the patient's situation

A doctor should always tell the true to his patient's condition, he should never exaggerate the patient's situation.

4.6 A doctor should never neglect the case nor should he reject

If a doctor is on duty by any reason he can neither neglect the patient nor he refuse to operate.

4.7 Standard of reference if he does not have the knowledge of the disease

If in any case doctor does not possess special knowledge for

the particular diseases, he can refer the patient to specialists for the further treatment.

4.8 Standard of consultation, unnecessary and unwanted consultation should be avoided

There should be standard of the consultation. No doctor can call patients for consultation again and again without any particular reason

4.9 Standard of appropriate investigation and appropriate treatment

A doctor should always follow the particular process to identify the diseases for the effective and speedy recovery for the patient.

4.10 Standard of maintenance of medical record

A doctor should keep all the medical record of the patients whoever have visited and consulted him for minimum 3years, and if any request is made for the records then he should provide the same within 72 hours.

4.11 A doctor is bound to provide emergency care to patients on humanitarian grounds

At the time of Hippocratic Oath doctor take onus to serve the suffering and provide the best service to humanity, it becomes his duty to provide emergency care to the patient.

4.12 A doctor should not indulge in corrupt, unethical and incompetent conduct

According to the law doctor should work according to norm and rules laid down by the government or MCI, their first and foremost concern should be to alleviate the suffering than money. And if any doctor found guilty of unethical and corrupt practices MCI reserve all the right to take appropriate action.

4.13 He should work within the limits of professional competence

Doctor should work according to professional competence.

4.14 He should keep his staff well informed about the patient's condition if he delegates a task to other

Once a patient and doctors relationship is established, it becomes doctor's duty to use reasonable care and skill to attending the patient. And if in case he delegates his duty to somebody else it is his duty to render full information regarding the patient's condition and treatment to his staff and colleague.

4.15 Standard of providing medicine and tests which meets and serves the patient's needs

For the better result and effective treatment it becomes doctor's duty to prescribe certain tests and medicine for the treatment of the patients. Any nexus between drug store owner and pathologist for the commission is strictly prohibited.

4.16 Standard of keeping himself up to date with the new treatments and technologies of medical field

According rules laid down by MCI it is doctor's legal moral duty to upgrade and attend educational seminar to learn

advance treatment and new technology.

5. What practices are unethical medical malpractices?

Medical profession is the most respected profession in the world and the person who upholds the medical degree known as the most respected person in society. There is an old saying: "With great power comes great responsibility" "And we, doctors have been placed next only to God Himself - "Vaidyo NarayanoHarihi". The doctor patient relationship is based on mutual trust and respect, whatever doctor says and advice becomes gospel for the patient. However things have reversed and the relationship has lost its serenity. The rapid change in medical field and privatisation of health care services has strained the pious relationship.

In Indian Medical Association vs. V. P. Shantha - 1995 (6) SCC 651^[9], Is the landmark case in medical, In this case The Supreme Court OF India Held that professional men should possess a certain minimum degree of competence and that they should exercise reasonable care in the discharge of their duties. In general, a professional man owes to his client a duty in tort as well as in contract to exercise reasonable care in giving advice or performing services. This was Landmark judgement in medical History where Medical Profession were taken in the ambit of Consumer Protection Act 1986 and the relationship between doctor and patient were known as service provider under section 2(1) (o) of Consumer protection act and patient Consumer.

The doctor treats their patient only as consumer or source of income, this recent change has developed distrust between two and the conflict between two are increasing day by day. The fall of moral ethics began rapidly, which resulted in unethical attitude and violation of law by doctors. These two aspects are intertwined. This also resulted in change in attitude of medical profession from *service to humanity* to *amassing of wealth* by unethical practice like 'Organ transplant', prescribing 'unwanted pathological tests' and 'surgeries'.

The cancer of corruption is eating into medical sector more widely than ever before. There are frequent reports of needless or unwanted procedure like insertion of *stents into healthy hearts, prescribing caesarean births, replacement of workable knees, etc...* All these malpractices are aimed at making big money by unscrupulous practices.

The new entrants to the medical field were treating the profession as a "commercial venture" to make fast bucks by resorting to all unethical practices of encouraging middlemen and other illegal methods. The most common unethical medical practices are as follows:

5.1 Business of cut practice and racket of referrals

In recent time I have come across with few cases where doctors refer their patient to particular laboratory and if you are obstinate kind of person and get done your test from somewhere else they would refuse to accept your result. These practices are very common now a days; if you refuse to get your test done from prescribed test lab they will not accept. This practice is so well planned and well established practices are where doctor gets their share on monthly basis^[10].

5.2 Promotion of Certain medicine

In Our country doctors are held in high esteem by patients,

they are considered second 'GOD' by most of the patients. But alas this is a relationship between patient and doctor, it is no more sacred relation. Doctors, who are frequently in connection with patient's medical representative, find it easy to target innocent people through our doctors. Doctors are more likely to prescribe new and expensive medicines which are introduced by MRs to achieve their pharmaceutical companies target for their selfish end (to receive more and more commission from these pimps).

5.3 Unnecessary diagnostic tests

There would be hardly any incident when you go to doctor for stomach ache and you got list of path lab test, once a while everyone has been victim of this kind of torment. The situation has become pitiable and status of healthcare industry in India has become cause of worry. If I talk about an era where science was not so advanced and our doctors used to identify our problems just with a conversation, now it has become dream, the more advanced technology and availability of diagnostic tools, have made our doctors plodding and inattentive.

CDR Medical Centre v/s Kailash Nath Srivastava^[11] According to the case appellants wife admitted in to the hospital for gallbladder operation, but at the same time hospital was not well equipped for all the process, this is part of unethical practices (according to MCI guidelines doctor cannot commit and advertise those things which they do not have in the hospital), where doctor do commit certain things which are not available and which took patient's life.

Director, Mary Queen's Mission Hospital v/s M.J. Jose^[12] Case is related to unfair trade practices (unethical practices) in this doctor advertised those facilities which they did not have in the hospital it is part of most common unethical practices, where doctor and hospital for few bucks make false promises and boast about their facilities.

Shashi Balav/Sushil Kumar^[13] case is of unwanted test and diagnostic of the patient. In this case patient was referred to some known persons path labs and then the test were positive and when the patient and his family went for test same which was suggested by the doctor to other path lab all the test were negative. This case clearly shows the recent rampant type of unethical medical malpractices.

Local news paper case

Pathological test Bhopal case Due to heavy cuts in Pathlabs it is proved that doctors take heavy commission from the path labs, The Patrika news reported this and Bhopal the Path Lab centres decided not to take any cut to the doctors resulting in reduction of Path Lab tests, The number of tests came down around 30 to 50% which clearly shows that there are unwanted practices.

5.4 Unwanted stent surgeries

The mushroom growth of stent business has raised many questions. The studies show that in India alone there are hospitals who conduct more than 25000 stent surgeries in a year, who are very close to stent makers. Cardiologists claim that stent can save person's life from heart attack. Few years ago the US, studies had found that half of the stenting procedures were of non-emergency and not appropriate, and

due to this several cardiologists and hospitals were asked for million dollars penalties for unnecessary stenting.

5.5 Increase in Caesarean delivery

In past few decades, the concept of unnecessary surgeries has developed, and the people who benefit from these procedures are the surgeon and hospitals who charge exorbitant extra amount from us. And the most common one is C-section deliveries which are being foisted on females to extract extra amount from the family. A survey report in newspaper shows that in Udaipur only out of 1500 deliveries almost 540 deliveries were caesarean.

Local News Paper Report Caesarean cases in Rajasthan it has been reported that large number of C-section cases are found both in government and private hospitals normal delivery takes little time, The patience yields to the pressure of doctors for however in the event of safety and recommends for caesarean. This is a common practice because there is big money.

5.6 Removal of Human Organ

Human organ transplant is one of the biggest achievements of the scientists in the field of medical science. However its success has also led many unethical issues in today's world. The demand of patients in need of organs transplant is increasing day by day which is leading to the unethical practice between the medical communities to supply them with these in the way of competition for organs and making the situation worst. The Human Organ Transplant Act 1994 was promulgated by the Central Government, whereas it is expedient to provide for the regulation or removal, storage and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs^[14]. Nevertheless, there are numerous challenges still to be resolved; particularly these are related to the consent of donor and his family's, and equal distribution of organs.

Hiranandani Case

The most famous case of recent time is Hiranandani Hospital Mumbai were renowned doctors of India found in a kidney sale and transplant case on August 9.

6. Conclusion

Of late there has been phenomenal growth all over the world in the treatment of patient partly because of various diseases and partly in wrong diagnosis. Medical profession is at boom either for making money or promoting so called medicine. The pharmaceutical companies and the doctor are hand in glove to loot the patient be it rich or poor. The reasons are obvious as the fees in the medical admission are skyrocketing. High class star hospitals are mushrooming to lure the clientele with false hope of best services. Though it is not applicable to all yet the mad rush to claim tall results are advertised. The patients are confused and finally give in to one or the other hospital. It has also been a practice to refer the cases when their efforts fail to revive the patient leaving him at the mercy of God.

The medical education is so costly that all the passouts desire quick money and therefore they fall prey at the hands of the pharmaceutical companies. Who share handsome amount to

reimburse study expenses by way of incentives in the form of gifts, commissions, foreign trips. The pharma companies take the advantage of marketing those drugs which are not worthy for human consumption through doctors. This scandal goes on and on and accountability of the company is not observed.

7. Suggestion

It is not very easy for any country to provide adequate health care to whole country. It takes lots of efforts and it is the gigantic task for country like India to achieve this. In my research all I have tried to identify the root cause of the problem and with best of my efforts I tried to give snapshot of Indian health care system. The task I had in my mind was how to improve Indian health care system to give required health care services to each and every person whether it rich or poor. According to my survey report I found still there is hope to improve our health care system, with this I don't want to blame entire medical fraternity, I personally respect this profession and believe that there no other profession like this.

- Effective Clinical Establishments
- Online report and rating Of Doctor annual basis
- Open a Patient Complaint Cell
- Complete information and transparency

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