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Medical Ethics

As per the Competency-based Medical Education Curriculum (NMC)



HIGHLIGHTS

- Complete handbook on "Ethics in Medical Profession"
- Latest MCI Regulations on "Professional Conduct, Etiquettes and Ethics"
- Follows the new "Graduate Medical Education Regulations, 2018"

Revised & Edited by
Rimpi Gupta

4th Edition

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Contents

SECTION 1

INTRODUCTION

1. Medical Ethics: Some Basic Issues 1
2. Teaching/Learning Medical Ethics 13
3. Codes of Conduct 19

SECTION 2

BIOETHICS

4. Malpractice and Negligence 25
5. Confidentiality (Professional Secrecy) 39
6. Autonomy and Informed Consent 42
7. Rights of Patients 53

SECTION 3

PROFESSIONAL AND PERSIONAL

8. Irrational Drug Therapy 57

SECTION 4

BEGINNING OF LIFE

9. Right to Life 65
10. Sex Preselection and Female Feticide 68
11. Assisted Reproductive Technologies 74

SECTION 5

END OF LIFE

12. Care of the Terminally Ill 85
13. Euthanasia 96

SECTION 6

HEALTH POLICY AND HEALTH CARE

14. Health Policy 103
15. Distributive Justice in Health Care 111
16. Technology 115

SECTION 7

EMERGING ISSUES

17. Alternate Medicine 125
18. Organ Transplantation 133
19. HIV/AIDS 141
20. Genetics 152

SECTION 8

HUMAN EXPERIMENTATION AND RESEARCH

21. Human Experimentation 165
22. Clinical Trials 176

Annexure: *Indian Medical Council (Profession Conduct, Etiquettes and Ethics) Regulations, 2002* *187*

Index *205*

CHAPTER 4

Malpractice and Negligence

Malpractice is professional misconduct. There is failure in carrying out the professional duties with competence and integrity, in the "best interests" of the patient. There may be improper or insufficient knowledge and skills, or their defective application, or wrong attitude. The accepted norms of care must be exercised. Substandard management of the patient, whether due to incompetence, negligence or ulterior motives, is a breach of duty. Every doctor has a duty to prevent malpractice. The code of Ethics of the Medical Council of India says: "A physician should expose without fear or favour, incompetent or corrupt, dishonest or unethical conduct on the part of the members of the profession".

INCOMPETENCE

Quality assurance is a must in medical care. The most important factor in assuring quality is the competence of the doctor.

Competence of the doctor is determined first when he/she

i. undergoes the prescribed course of study,
ii. satisfies the examiners,
iii. does the internship to the satisfaction of the authorities, and
iv. gets registered by the Medical Council.

The doctor is licensed to practise, being considered to have the required competence to provide medical care. Will the doctor continue to be competent thereafter? Will the doctor continue to acquire the newer knowledge and skills brought on by the advances in medical sciences? If he/she does not cope with the advances, the quality of care suffers and does not measure up

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to the standards expected. Many doctors tend to deteriorate, over a period of time, in their knowledge, skills and attitude. Not only do they not make any attempt to update themselves but they slip down.

How can we determine whether the doctor continues to meet the appropriate standards of general or speciality practice?

At present, we do not have any system in India to ensure continued competence. Some countries have periodical re-registration. We can help the doctor to maintain competence. Continuing medical education can make available the needed knowledge, attitude and skills, with awareness of the advances in medicine. If the doctor makes use of it deligently, continuing medical education can help to build up adequate competence to discharge his/her duties. It is not difficult to assess knowledge. It is not that easy to assess skills. It is extremely difficult to measure other critical characteristics so important in patient care, integrity, respect for the patient, compassion, cost containment and others.

MEDICAL PRACTITIONERS' FITNESS TO PRACTISE

Many medical practitioners continue to practise medicine even when they are not in a fit condition to practise.

Impaired physician is one who is unable to practise medicine with reasonable skill and safety to patients because of physical and mental illness due to various causes including the ageing process, loss of motor skills, or excessive use or abuse of drugs including alcohol. Mentally impaired physicians may experience erosion of professional competence and can pose danger to their patients.

Doctors are subject to increasing emotional problems. Close encounter with death may disturb the doctor; so also fear of making a mistake or having made a mistake and the possibility of legal complaint or negligence suit and investigation. Ready availability of drugs and ability to afford alcohol can be contributing causes. Depression may arise from too much workload. Hospitalization rates due to psychiatric causes are more common in USA among male doctors than their counterparts belonging to same social

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class. The common causes are alcoholism, drug dependence and affective disorders.

Doctors may become incompetent due to many cuases:

> Shankar (name changed) is a general practitioner. He had been a good and competent practitioner, loved and respected by his patients, his colleagues and all in the neighborhood. He has now become old and forgetful. Some of his colleagues would like him to stop practice but do not wish to tell him so. Many of his diagnoses are wrong, prescriptions are often of no use and sometimes harmful.

What is to be done in case of incompetence? Individual doctors, professional associations and the state should come forward to help the impaired (incompetent) doctor, with empathy. In the case of Dr Shankar, one specialist took courage and over a cup of tea, apprised Dr Shankar of the situation. Dr Shankar said: "I did not know; no one told me". He promptly stopped his practice, following the ethical principle: First of all, do not harm.

Programs must be established to identify and help the impaired doctor. Counseling services must be available, it must be voluntary and confidentially maintained. Active participation of 'sick' doctor must be sought and obtained. Progress must be monitored, especially in instances of alcohol and drug abuse. It is the duty of the members of the medical profession to take steps to ensure that standards of care are kept up. The code of conduct requires it.

NEGLIGENCE

> "Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do"
>
> —Salmond, Law of Torts.

The doctor-patient relationship is in the form of an implied contract. It comes into existence when:

- a patient seeks the professional services of the doctor, and
- the doctor agrees to undertake the care of the patient.

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This relationship places a responsibility on the doctor to:

- act in accordance with the established standards of the medical profession,
- take all reasonable care of the patient, and
- avoid all unreasonable risks.

The standard of care required is that of an ordinary skilled person, professing to have and exercising the knowledge and skill at that level (general or specialist) of service. A reasonable degree of care and competence must be exercised, as judged in the light of the circumstances of the case. The highest degree of care is not required; the lowest degree of care is not enough. If the doctor fails to measure up to the expected standard of care, the doctor is negligent. If as a result of negligence, harm is done, the doctor is liable to pay damages.

The principle of negligence applies whether the doctor:

- accepts fees or not;
- is in private practice or employed; or
- is a general practitioner or a specialist.

If employed, the employer may have vicarious responsibility. The doctor has a duty of care in:

- deciding whether to accept the patient for treatment (though it is maintained that the doctor is free to accept or reject a patient, there are circumstances where this freedom is questioned);
- deciding on the various aspects of diagnosis and management; and
- administering the treatment.

A woman with complicated pregnancy was advised by the primary health center to go to the District Hospital. On her way in an autorickshaw, she had labor pains and went to a private clinic on the way. The doctor refused to take the patient saying that he is not experienced in obstetrics and that he is not equipped to deal with labor cases. The woman delivered on the roadside. There was a public outcry and the doctor was arrested.

If there is a breach of duty of care, then the doctor is negligent. The standard can vary:

- from time to time (advances in medical care);
- with the situation (availability of tests and infrastructure); and
- if the doctor is a general practitioner or a specialist.

Error in diagnosis or treatment may occur. The doctor is not liable for negligence if the doctor has acted in accordance with the

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accepted medical practice in the given circumstances. The doctor-patient contract is a commitment of deed and not of the final result.

Many instances of negligence occur.

Nagamma, 38 years, had an operation for an ovarian cyst. After going home, she developed pain. Pus began coming out through an opening in the scar. She was operated again. An artery forceps and a piece of guaze were found within the abdomen.

Blood of wrong group was transfused to a patient without cross-matching. She developed renal failure and died.

A patient was admitted for elective surgery. The surgeon asked for a blood transfusion as the hemoglobin level was low. The blood was transfused before the results of the Australia antigen test came. The donor blood tested positive.

A doctor is negligent, if:

- the performance of the doctor falls below the standard of a reasonably competent practitioner at that level,
- there is negligence in diagnosis, administration of drugs or procedures including operations,
- there is failure to take all reasonable precautions, or
- there is any other kind of negligence in providing care.

Most of the cases of negligence do not come to the notice of the public or the law. But increasing numbers of doctors are now being taken to the court and damages are being awarded. To establish negligence, there must be a reasonable connection between the act or failure to act by the doctor, and harm caused to the patient. For the award of damages, actual injury or damage must be caused and proved to be so caused.

There are many pronouncements by the courts (and award of damages) in this country and much more so abroad.

Peter Pain, J (1983): "A doctor owed a duty to his patient to observe the precautions which were normal in the course of the treatment that he gave".

McNair, J (1959): "In the case of a medical man, negligence means failure to act in accordance with the standards of reasonably competent medical man at that time. That is a perfectly accurate statement as long as it is remembered that there may be one or more perfectly proper standards; and if a medical man conforms with one of those proper standards, then he is not negligent".

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Lord Denning (1954) stated in *Hatcher-vs-Black*: "When a person who is ill, goes in for treatment, there is always some risk, no matter what care is used. Every surgical operation involves risks. It would be wrong, and indeed bad law, to say that simply because a misadventure or mishap occurred, the hospital and doctors are thereby liable".

Many doctors take insurance against claims of negligence and damages. But that is not enough. The medical profession must be alert. Doctors must take steps to prevent negligence. The Royal College of Surgeons and the Faculty of Anaesthetists, UK, conducted a confidential enquiry into operative deaths. The finding of the (Dr Brendan Devlin) committee was that about a thousand patients die in a year through errors in the operation theater in UK. The failure rates are much higher when the operation is done by "Occasional operators".

If death occurs on the operative table, who is responsible? Surgeon, Anaesthetist, or the hospital/nursing home?

When death occurs on the table, it is the duty of the surgeon and/or the hospital authorities to inform the police (or coroner, where applicable). They will make the necessary investigations and decide if the patient died a natural death or due to negligence. Action will be taken accordingly. The operation theaters must have adequate facilities.

There is a time limit for lodging complaints which may be civil or criminal. It is three years for civil complaints. For criminal law, it is up to two years. In the case of a minor, complaints can be filed 2/3 years after the minor reaches eighteen years of age. Criminal action can be taken in case of wrong diagnosis, mismatched blood transfusion or if the monitor is not working. Fraud, like charging costs for services not rendered, can be sued under civil law.

Where a claim is brought for the tort, damage is a necessary element of the cause of action. If the plaintiff fails to prove that any loss or injury was caused by the negligence, then he/she will not be entitled to damages.

Sueing under criminal law will be according to the Indian Penal Code sections 304A, 336, 337 and 338. Section 304A states: "Whosoever causes death of any person by any rash and negligent act not amounting to culpable homicide, shall be punished".

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Section 336 states: "Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished". Similarly, sections 337 and 338 provide for punishment when hurt is caused by rash or negligent acts.

The Consumer Protection Act, 1986, provides for obtaining relief for any person "who hires any services for a consideration which has been paid or promised, partly paid and promised or under any system of deferred payments and includes any beneficiary of such services_____".

PROFESSIONAL CERTIFICATES

An area where there is considerable amount of unethical conduct is the issue of professional certificates. For a small fee or because of pressures, some doctors issue false certificates. All doctors must abide by the guidelines given by the Medical Council of India.

"Registered practitioners are in certain cases bound by law to give or may from time to time be called upon or requested to give certificates, notification, reports and other documents of similar character signed by them in their professional capacity for subsequent use in the courts of justice or for administrative purpose, etc.

"Any registered practitioner who shall be known to have signed or given under his name and authority any such certificate, notification, report or document of a similar character which is untrue, misleading or improper is liable to have his name erased from the Register"—Indian Medical Council Regulations, 2002.

Mr Ram, aged about 50 years, approached Dr Narayan for a disability certificate to get some disability pension from the Government. Dr Narayan assessed the disability at 25% and issued a certificate. The patient went away but returned 2 days later with a powerful local leader, who demanded that the certificate be changed to 40% disability, with which alone Mr Ram can get the pension. The doctor was in a dilemma. He was sympathetic and wanted to help. At the same time, his assessment according to all the norms was that the disability was only 25%.

What should Dr Narayan do?

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REBATES AND COMMISSION

There are complaints especially in the cities and larger towns that dubious arrangements are made by doctors by which patients have to pay unnecessarily, with profits going to the doctors involved. There seems to be a growing tendency for making more and more referrals for diagnostic tests and consultations. Where they are truly indicated such referrals are beneficial to the patient. Occasionally, they are done because of 'kick-backs'. Such referrals for personal gains, direct or indirect, are unethical.

"A physician shall not give, solicit or receive nor shall he offer to give, solicit, or receive any gift, gratuity, commission or bonus in consideration of or in return for the referring, recommending or procuring of any patient for medical, surgical or other treatment. A physician shall not directly or indirectly participate in or be a party to the acts of divisions, transference, assignment, subordination, rebating, splitting or refunding of any fee for medical, surgical or other treatment.

"These provisions shall apply with equal force to the referring, recommending or procuring by a physician or any person, specimen or material for diagnostic or other study or work".

—Indian Medical Council Regulations, 2002.

Such referrals, splitting and sharing seem to be prevalent in all countries. Bob Hope, in his characteristic jocular way, says: "I do not know whether my doctor is a physican or a booking agent. All that he does is to book appointments with other physicians".

ADVERTISING AND PROMOTION

An unfortunate trend is the increasing violation by some of the doctors of the code of ethical conduct which prohibited or limited advertising. With the modern tendency for aggressive advertising, some doctors seem to consider that they can also indulge in unethical advertising.

The code of Ethics of the Medical Council of India says:

"Solicitation of patients directly or indirectly by a physician, by groups of physicians or by institutions or organisations is unethical".

"A Physician shall not make use of or aid or permit others to make use of him or his name as subject of any form or manner of advertising or publicity through any mode either alone or in

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conjunction with others which is of such a character as to invite attention to him.....

"Nor shall he boast of cases, operations, cures or remedies or permit the publication of report thereof through any mode".

A medical practitioner is permitted a formal announcement in the press on:

1. starting practice,
2. change of type of practice,
3. change of address,
4. temporary absence from duty,
5. resumption of practice, and
6. succeeding to another practice.

Accepting Gifts

Gift-giving and receiving are rampant. The manufacturers/producers want to persuade the doctor to prescribe certain products. Very often this leads to the prescription of unnecessarily costly drugs, without proper indication or assessment. Inducements are of various kinds. They may be in the nature of pens, calenders, diaries, desk stands or beautiful paper weights with the name of the firm/product printed or embossed. It may be in the nature of invitations to lunches or dinners,preceded by "scientific discussions". Companies may host conferences, "all in the interests of better patient care". Invitations are given to the specialists/consultants/administrators to spend weekends in Singapore or other lovely distant places, all expenses paid, "discussing - scientifically, of course—the merits of the particular product".

Some doctors avoid the question whether these are ethical ways of promotion of drugs, equipment or other products. They say that "I may accept the gifts but I take my own decisions". Are the firms so foolish?

UNNECESSARY PROCEDURES

There is a general feeling that some doctors indulge in unnecessary procedures, whether they be operative procedures or prescribing drugs. Often such procedures are of doubtful value and may even be harmful. One such procedure used to be appendicectomy. Fortunately, it is on the decrease. Prescribing multivitamin preparations and tonics, without any indication whatsoever, still continues.

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Kalyani, 22 years, delivered normally a 3 kg baby. Both mother and child were healthy. Next day, the mother was given an intravenous infusion of dextrose to which was added a multivitamin preparation. There was an anaphylactic reaction and the mother died.

The insert for the multivitamin preparation contained in small letters, a warning that hypersensitivity reaction may occur in 1 in 10,000 persons.

The obstetrician was asked why the dextrose and multivitamin preparation were given. The answer was "we always give". There was no indication whatsoever.

Because of this unnecessary procedure, the child became a one-parent child, losing the mother's care. The young father became a widower.

Sometimes the procedures are unnecessarily costly. This is especially so with "confirmatory" tests. Doctors must determine whether the particular procedure (diagnostic or treatment) is indicated and whether it is the best alternative (considering the benefits, risks and cost) among those available.

Questionable increases have been occurring in the number of cesarian sections and hysterectomies.

Participation in Torture

An extreme instance of malpractice is participation in torture. The doctor may not be quite aware of such participation initially. That was what happened in Nazi Germany. Doctors began participating in "human experimentation" and "eugenics" which later on became torture and extermination of certain races.

The doctor's participation in torture may be in various ways:

1. Assessing the victim's health before torture, to ascertain whether the victim is 'fit' to be tortured;
2. Determining how much longer it is possible to continue the torture without killing the victim;
3. Reviving the victim who has collapsed or has been rendered unconscious by the torture; and
4. Actively participating in the process.

Such tortures go on every day, whether it is by the police or by the terrorists. Most often the victim is tortured to extract information or a "confession". Participation in torture or even in interrogation of the prisoner or victim is unethical.

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THE DECLARATION OF TOKYO (WMA, 1975)

The Declaration of Tokyo has since its adoption in 1975, been the most comprehensive statement produced by the medical profession on the question of the torture and cruel, inhuman or degrading treatment of detainees. It was adopted by the 29th World Medical Assembly, Tokyo, Japan.

Declaration of Tokyo

It is the privilige of the medical doctor to practice medicine in the service of humanity, to preserve and restore bodily and mental health without distinction as to persons, to comfort and to ease the suffering of his or her patients. The utmost respect for human life is to be maintained even under threat, and no use made of any medical knowledge contrary to the laws of humanity.

For the purpose of this Declaration, torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason.

1. The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife.
2. The doctor shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment.
3. The doctor shall not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment is used or threatened.
4. A doctor must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The doctor's fundamental role is to alleviate the distress of his/her fellow men, and no motive whether personal, collective or political shall prevail against this higher purpose.
5. Where a prisoner refuses nourishment and is considered by the doctor as capable of forming an unimpaired and rational

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judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent doctor. The consequences of the refusal of nourishment shall be explained by the doctor to the prisoner.

6. The World Medical Association will support, and should encourage the international community, the national medical associations and fellow doctors, to support the doctor and his or her family in the face of threats or reprisals resulting from a refusal to condone the use of torture or other forms of cruel, inhuman or degrading treatment.

PRINCIPLES OF MEDICAL ETHICS (UNITED NATIONS, 1982)

The principles are elaborated within the text of Resolution 37/194 adopted by the United Nations General Assembly, 18th December 1982.

The Geneal Assembly...

DESIROUS of setting further standards in this field which ought to be implemented by health personnel, particularly physicians, and by government officials.

1. ADOPTS the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment set forth in the annex to the present resolution;
2. CALLS UPON all governments to give the Principles of Medical Ethics, together with the present resolution, the widest possible distribution, in particular among medical and paramedical associations and institutions of detention or imprisonment in an official language of the State;
3. INVITES all relevant inter-governmental organizations, in particular the World Health Organization, and non-governmental organizations concerned to bring the Principles of Medical Ethics to the attention of the widest possible group of individuals, especially those active in the Medical and paramedical field.

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Principles of medical ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment

PRINCIPLE 1

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

PRINCIPLE 2

It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

PRINCIPLE 3

It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

PRINCIPLE 4

It is a contravention of medical ethics for health personnel, particularly physicians:

a. to apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments;
b. to certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international

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instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

PRINCIPLE 5

It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, or his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health.

PRINCIPLE 6

There may be no derogation from the foregoing principles on any grounds whatsoever, including public emergency.

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Salient Features

- Till date the ethics in the medical field and clinical practice has been ignored affecting the health-care system at large
- Earlier a medical student used to imbibe the ethical values seeing his teacher/guide/seniors who used to play the role models for them
- The interaction forming basis of doctor-patient relationship exist across ethnic, sexual and societal variables
- Doctors trained in different settings tend to interpret the problems and issues in different ways because there were no uniform guidelines in the medical curriculum regarding ethics
- Keeping all this in mind, the Medical Council of India (MCI) has revised the medical curriculum with the aim to introduce MBBS student to the aspects of medicine that falls outside the purview of core medical science disciplines including language, communication skills, ethics, professionalism
- *Medical Ethics* will help the medical students to acquire knowledge of medicolegal, societal, ethical and humanitarian principles that enable them to grow in their profession and serve the patients and society in a better way.

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