Medico-legal aspects in Otorhinolaryngology

Essay

Submitted for Partial Fulfillment of the Master Degree of Otorhinolaryngology

By

Neven Mohamed Hassan Ebrahim

M.B.B.Ch

Faculty of Medicine- Ain Shams University

Under supervision of

Prof. Dr. Ossama Mahmoud Ebrahim

Prof of ORL – Head & Neck Surgery

Faculty of Medicine – Ain Shams University

Prof. Dr. Mohamed Shahata Taha

Ass. Consultant of ORL – Head & Neck Surgery

Faculty of Medicine – Ain Shams University

Prof. Dr. Heba Mohamed Halawa

Assistant Prof. of Forensic Medicine and Clinical Toxicology

Faculty of Medicine – Ain Shams University

Faculty of Medicine

Ain Shams University

2015

الملامـــح الطبيـــة الشرعيـــة لعلـــم الأذن والأنـــف والحنجـــرة

رسالة

توطئة للحصول على درجة الماجستير

في جراحة الأذن والأنف والحنجرة

مقدمة من

نيفيـــن محمـــد حســـن ابراهيـــم

بكالوريوس الطب والجراحة

كلية الطب –جامعة عين شمس

تحت إشراف

أ.د / أسامـــة محمـــود ابراهيـــم

أستاذ الأذن والأنف والحنجرة

كلية الطب – جامعة عين شمس

أ.د / محمـــد شحاتـــة طـــه

أستشارى مساعد الأذن والأنف والحنجرة

كلية الطب – جامعة عين شمس

أ.د / هبـــة محمـــد حـــلاوة

أستاذ مساعد الطب الشرعى والسموم

كلية الطب – جامعة عين شمس

كليه الطب

جامعه عين شمس

٢٠١٥

Acknowledgment

Al hamdulillah, first of all, I would like to thank Allah that gave me the strength and hope, all through that work till it was finished.

I would like to thank the many people who have made this work possible.

I am deeply grateful for **Prof. Dr. Osama Mahmoud Ebrahim** for his great valuable supervision on this work and for accepting me as loyal student.

My great sincere appreciation is for **Prof. Dr. Mohamed Shahata Taha** for his constant support and guidance in every page in this essay.

My special thanks go for **Prof. Dr. Heba Mohamed Halawa** for her patience, kind care and thorough research to achieve this work.

I would like to express my deep appreciation to all my professors, colleagues and candidates who guided me to achieve my goal through this work.

To **My Aunts,** my precious pearls who were my ever supporting angels from the first beginning of my footsteps and all through my life, they gave me the power and faith to move on.

My beloved Uncle, the greatest surgeon and the kindest heart thanks for being my Godfather all through my life.

To all those my heartfelt thanks.

Neven Mohamed Hassan

سورة البقرة الآية: ٣٢

Introduction

Medicine is one of the most respected and reversed professions the world over. Doctors are regarded as saviors who deliver the people from their afflictions. However, to prevent those who practice this profession from faltering in delivering their duties, code of medical ethics, etiquette and professional conduct were formulated as guidelines ***(Mello et al., 2004)***.

Egypt, Babylon, India and China had some of the oldest civilizations in the world and evidence of existence of laws in relation to medicine during those times has been found. Medico-legal code practiced around 2200 BC, during the role of the king of Babylon is the oldest known code of the medico-legal conduct. Hippocrates (460-377 BC) is the father of modern medicine. His guidelines known as "Hippocrates oath" have been, by far, the most reversed and practiced principles of the medical ethics the world over ***(Mathiharan and Patnaik, 2006)***.

In the present day, the Geneva declaration formulated by the World Health Association is a rephrased version of the Hippocrates oath practiced the world over. Under the provisions of the Act (No. MCI-211 (2) 2001 Regn) read with section 33 (m) of the Indian Medical Council Act

1956 (102 of 1956), the Medical Council of India with the previous approval of the Central Govt. has made detailed regulations relating to the professional conduct, etiquette and ethics for registered medical practitioners and these have been published in the Gazette of India dated 06 April, 2002 (part III – Section 4) and are in force from the said date ***(Vij, 2008)***.

As per the medical Council of India amendment act no. 24 0f 1964, the Council has specified a warning notice that violation of this code shall constitute "infamous conduct in a professional sense i.e: it will be Professional Misconduct ***(Mukherjee, 2007)***.

With the development of medical science, newer modalities of treatment are being invented everyday and with them newer medico-legal issues are copping-up. Growing commercialization in the society has also pervaded this noble profession, and a few doctors have resorted to unethical practice for financial gains. Use of touts, advertisements to lure patients, commissions for referrals and investigations, irrational prescriptions, prenatal sex determination, illegal organ transplants and growing instances of medical malpractice are just some of the glaring examples of the degradation of moral values and ethics in this once revered profession. Medical ethical

problems that once were no more than entertaining speculations about the future are now a reality and medical ethics can no longer be regarded as a mere formality in the medical education ***(Mamdani, 2004)***.

Numerous verdicts of the courts on cases between doctors and patients have frequently been in favor of the patients which have proved the guilt of the faltering physicians. Reacting to these, the physicians have raised their concerns and have cautioned about the fear of prosecution which would compel the medical fraternity to attend the patients and do research with a guarded approach ***(Nandy, 2004)***.

This project is a sincere effort to highlight the awareness of the various principles of medical ethics and codes of conduct amongst the medical professionals and to assess their approach in dealing with various issues confronting them and to invite opinion and suggestions from them ***(Nayak, 2004)***.

Aim of the work

The aim of the present assay is to highlight different medico-legal aspects of medical practice in otorhino-laryngology (ORL) and present suggestions to help otolaryngologists safeguard against unnecessary claims. Also it aims at reviewing some major problems and addressing the legal aspects concerning those problems.

Medical Ethics

Why do we need Medical Ethics?

We live in a multicultural society. In this pluralist context there is a lack of moral consensus. People do not necessarily share a common moral outlook and determining what is right and what is wrong is based on a variety of different values. Medical ethics are the laws and rules that regulate the medical profession under supervision of the medical syndicate. In medicine, these differences lead to disagreement both in practice and theory between doctors, other professionals, patients, families and institutions. Difficult cases highlight the differences in moral perspectives and pose challenges for determining a "best" or "right" way forward ***(Strech, 2008).***

In response to these difficulties, theoretical ethics provides framework for approaching complex dilemmas and difficult decisions. Ethics does not provide easy answers to difficult problems, but it offers a clear structure and more consistent means of making moral decisions. On the practical level, ethics is not something which is outside medicine, but it is an integral part of doctors' daily practice, whether in relation to gaining a patient's consent, observing confidentiality or using professional judgment to assess

areas such as best interests. It offers critical analysis of difficult issues and guidance in making decisions in practice ***(Alahmad et al., 2012).***

The Doctor-Patient Relationship

The doctor-patient relationship is the context within which many medical ethical dilemmas arise. Patients are less willing to accept what the doctor says without question and more likely to pressurize doctors to do what they wish. Doctors are seen as "need-meeters" who can and should dispense a pill or offer a treatment for every ailment. This poses difficult decisions for doctors in balancing what patients need ***(Banerjee and Sanyal, 2012).***

Patients' rights have been enshrined in the Patients' Charter (and the Human Rights Act in 1998). This is partly a reaction against the paternalism of medicine where "doctor knows best" and takes little note of patients' choice, desires or preferences regarding treatment. Respecting patient autonomy is now recognized as a fundamental principle in medical ethics ***(Verlinde et al., 2012).***

Both the doctor and the patient have valuable input to provide in any medical consultation. A partnership model allows for the patient to provide information about his/her own body and symptoms, as well as personal choices and

preferences, while the doctor brings his/her knowledge, skills, expertise and experience to the individual case. Together they are able to determine the best way forward for this particular patient. This partnership model requires good communication on both sides and recognizes the role of duties and responsibilities in medicine ***(Voigt et al., 2013)***.

Ethical Issues in Practice

Three approaches to making moral decisions (principles, consequences and virtues) have been recognized in the context of the doctor-patient relationship, as well as duties and responsibilities. It is helpful to consider the specific ethical issues in medicine and how we might approach them. These include consent and refusal, confidentiality, stopping treatment, ethical issues in research and resource allocation ***(Chima et al., 2013)***.

Medical consent

Consent is fundamental in every interaction between doctors and patients ***(Cowish et al., 2013).***

Medico-legal importance of medical consent:

The physician must understand the circumstances in which the consent must be taken in order to protect him/her-self legally. The physician should know the forms

of consent in order to verify the appropriate one. If a physical examination is conducted without the patient's consent, it could constitute a criminal offense (assault) or a trespass upon the patient ***(Draf and Hosemann, 2013).***

Circumstances in which the consent is not required:

In these conditions, the examined person cannot refuse the examination, thus consent is obligatory. These include:

1. School medical examination for the students.
2. Medical examination for food-handlers.
3. Medical examination for admission to a prison.
4. Medical examination in consent of military service.
5. Pre-employment medical examination.
6. On the probation order of court.
7. Immigrants at ports and airports ***(Soloman, 2013).***

Forms of consent:

1. **Implied (or requested) consent**: by the behavior of the patient, as when the patient attends the physician or calls the doctor to his/her house complaining of illness.
2. **Oral consent**: it should be sought immediately before:
   a. Examinations (rectal or vaginal).
   b. Minor procedures (such as taking blood samples).

A third person should be present to protect the practitioner from any accusations of indecent behavior assault.

3. Written consent: it is necessary before:

a. Major operations and procedures.

b. Medico-legal examinations e.g: in rape and criminal abortion ***(Matsui et al., 2012).***

Validity of consent:

The valid consent must be:

1. Freely given.
2. Taken only for legal procedures. The consent is invalid if obtained for an illegal procedure as in criminal abortion.
3. Given by sane person.
4. Given by a person above 18.
5. Given by a fully conscious person. In emergencies, as when the patient is in coma, the practitioner has to carry out procedures necessary to preserve life, but not more.
6. Must be informed, i.e: the facts in consent must be clearly stated, whether documented or verbal, for:
   a. Indications.

b. Possible complications (especially major and frequent ones).

7. Consent must be free:

a. Given with no fraud.

b. Given with no fear, i.e: must not be obtained by any force or blackmail ***(Abolfotouh and Abdallah, 2013).***

The normal standard in medicine is fully informed, valid consent given by a patient who is mentally competent. The "fully informed" part of consent involves the patient being given all relevant information regarding the treatment options and the potential consequences of a particular treatment. Information will vary from patient to patient and doctors are required to use their professional judgment about the degree of detail regarding benefits, risks and burdens in each case ***(Georgalas et al., 2008)***.

To be valid, consent must be freely given, ensuring that patients are free from any improper, undue pressure from doctors or other professionals. How, when and by whom information is given to patients about potential treatment can have a significant impact on the decisions made. If the consultant emphasizes a particular option as the best course, the patient may be more likely to agree to it. Patients can ask questions, consult others and weigh up different options ***(Albera et al., 2005).***

In emergency situations, where patients cannot give consent or refuse a treatment, doctors are obliged to act in the best interest of the patient. They have both legal and ethical duty to take measures to secure the patient's life and health. These may be short-term interventions that then enable the patient to discover sufficiently to make longer-term decisions about further treatment ***(Berry et al., 2008).***

Individuals who enter the armed forces agree to give up a degree of their individual autonomy and freedoms in the interest of the unit as a hole. They may be called on to put their life and/or health at risk for the good of the service and country. Prisoners also forfeit their autonomy and are less free to give or refuse consent, in particular with respect to intimate body examination. Both groups are still entitled to a high ethical standard of medical care and doctors have the same professional and ethical duties to these patients as others. Some patients may be incompetent or lack capacity to make choices and decisions for themselves. Patients who are mentally impaired or handicapped may lack sufficient understanding of the nature, purpose, risks and benefits of a proposed treatment to give valid consent. Doctors should not assume that these patients are incompetent without seeking to engage with them and discern the level of competence. Such patients should be encouraged to participate in decisions about their care whenever possible ***(Hammami et al., 2014)***.