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Commentary

The principle of authonomy and the bill of rights and duties of the patients

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Potentially any individual gathers conditions to position himself/herself in an independent and self-sufficient way towards various problems within the society where he/she belongs. The hospital institution which is expressive of the professional action is the suitable place for the sociological analysis of the changes of values besides considering the individual practice of the professional from the ethical point of view; it is to be encouraged a bioethical culture within the hospital organism. This should be done with an intervention of various interlocutors being a determinant factor for the creation of a paradigm shift essential for a true ethic practice. According to Chambliss "ethical problems in health's care are indivisible from the organizational and social settings in which they arise…they are in fact often fundamental, if unintended products of that system".[1] It is in this line that the Bill of Rights and Duties of the Patients emerges as a corollary of a declaration of ethical and moral principles but also of rights demanded to the third parties by evoking according to whom there is the possibility of the citizen in an individual name to be able to claim its implementation, thus contributing towards humanization of the health care.[2]

In the continuity of what is being followed in the other countries in the last thirty years the recognition of the patient as someone vulnerable (in a disease condition) was a substrate for the creation of our C.D.D in our country. Out of it results the autonomy principle, the right of refusal or the consent giving towards any medical action (article 8) and the right to information on his/her health (article 6), plus the right to information about the existing healthcare services and its competences. Yet it is the medical doctor who presents himself as the social partner of the patient by publicly committing himself to respect the human freedom and dignity as well as the patient's rights thus creating with this Declaration the foundations for the creation of a document that regulates over his collaboration with the patient who is actually the main actor.[3] While analyzing the Bill of Rights and Duties of the Patients we can see that the majority of rights expressed in it aims to enhance this autonomy concept, where it is underlined the idea that any man has the conditions to be a universal legislator.

Such rights aim towards the patient autonomy protection example of which is the right to be treated in respect by human dignity, the right to respect religious and cultural convictions, to be informed as to existing healthcare services and its competences, the right to having a second opinion, the access right to his/her clinical process and the right to present complaints and to be informed or not as to his/her clinical situation and also the right to give or deny the consent to participate in clinical tests as well as to perform any medical action. According to Esper the information to which the patient is entitled to in order to carrying out any medical act or regarding his/her clinical situation consists of an assumption so that the respect for autonomy be achieved, though it also constitutes a requirement to get the beneficence principle fulfilled.[4] When the patient is properly informed in such a way that he/she clearly understands why things should be carried the way they should we are undoubtedly contributing with his/her adherence to the various necessary procedures for his/her own good. When a patient is informed about the respect for the autonomy principle he/she will not oppose to the beneficence principle, instead he/she will contribute for this to be an absolute reality, a subjacent idea to various studies which defend the same position, being the participation in the decision very influenced by suitable information.[5]

According to CDDE and CDHB (Convention on the Man's Rights and Biomedicine) the right to inform the patient can rightfully be restricted or limited in case he/she wishes. Fact which was expressed in the nº2 of the 10th article, where it is expressed that if not of desired the person's will must be respected.[6]

Due to the need of safeguarding the person in case of disease, the World Medical Association drew up the "Declaration on the Rights of the Patients" (or Lisbon's Declaration). It had a set of certified prerogatives for the patient and which competes for preserving his/her dignity in a condition of a sick person.[7] The referred patient's rights are placed in the Health's Law Foundations (Law nº48/90 from 24th August). The Portuguese Republic Constitution establishes the person's rights to personal integrity, personality development and to freedom, as well as to the right to health protection. This right to health protection, enshrined in the Portuguese Republic Constitution is grounded in a set of fundamental values as human dignity, equity, ethics and solidarity which are guiding principles that serve as ground to the Patients' Bill of Rights and Duties.[8] Within the scope of respect for the autonomy it should also take up the acceptance that some sick people would prefer to thrust all their decisions to the doctor instead of receiving the respective information related to their clinical situation. Thus dismissing voluntarily big explanations. For those kind of patients the doctor's knowledge in a clear patronizing attitude is the sufficient argument for them to maintain confidence within themselves, being this option the one they take.[9]

To the patient's rights where it is already included the fact of being informed on his/her clinical situation it has to be added the consent information which is commonly called Informed Consent as a corollary of this right and duties towards himself/herself and towards the community. These should be complementary to the first ones because in order to make the autonomy complete, besides the referred rights there are also some duties. Thereby the patient must have the duty of watching his/her health condition and trying to guarantee his/her complete reestablishment and participating in the promotion of his/her own health and also of the community where he/she belongs. The patient has also the duty of providing the health professionals all the needed information so as to get the most correct diagnosis and suitable treatment under the penalty of not being able to present complaints of possible diagnosis "mistakes" or about therapeutics.

Holding to this point the patient will have the duty of collaborating with the health professionals by respecting their indications which was freely accepted by him/her.

He should obviously respect the rights of the other patients and obey the regulations of the operating rules of the healthcare services in order to use them in a most appropriate way and must want to collaborate in the reduction of necessary expenses. His/her autonomy will end if the others' are committed. For having surgery interventions done (compensation of surgery waiting lists), according to the respective procedure it is recognized that the patients should benefit from the right of a humanized and professional assistance and should provide his/her written consent for the surgery intervention proposal. He/she should accept the rules and regulations in force, where the right to be informed about his/her clinical situation should be enclosed. It should also be listed the registration procedures as well as organization, management and supervision of the patients for the surgery. However in case of not being able to be present on the surgery day and on the associated events to the suggested surgery procedures, the patient will have to invoke a justifiable reason as argument to justify an omission attitude and is obliged to fulfillment of the duties which will be between others to maintain updated his/her record in the list of patients for surgery.

He/she must inform the service of changes of any kind of element that is part of his/her process, namely the contact and the fact that he/she should be present in all the procedures' associated events. The patient must present a written statement whenever there is some professional or clinical irregularity that prevents him/her of coming. He/she should bring a certificate from the employer or medical certificate justifying the circumstances for his/her absence. Within the rights and duties of the patients as an expression of their participation in the healthcare activities it is to be reminded the importance of his/her involvement in the decision process on their clinical intervention strategy. This is a factor of great citizen global satisfaction already recognized even in 2004 in the Yearly Conference of the European Health Management Association.[10] Such conclusions reflect the affirmation expressed by SANTOS, who tells us that "the patient's aware participation in the therapy process is one of his inalienable rights. It has also shown to be one of the success factor of medicine and therefore constitutes an additional fact of its unconditional use.[11] There are various studies and models capable of answering and bearing challenges more frequently faced by the majority of the European Health Systems. This shows that the citizens intend to have more power and influence in the organization and management of the referred healthcare services.[12] It is believed that through the organizations which represents them and where the patients' association is included an outcome of greater respect for the patients' rights will emerge but also a better fulfillment of the respective duties. It will reinforce his/her right to autonomy where it is enhanced the alliance between individual action and social component.

For every individual it is recognized in the healthcare the right to express their free will, clarified and aware as to the care that will be provided to him/her. It will also guarantee the right that the health professionals, institutions providing healthcare and the society in a general way respectfully that will. As the same dignity is recognized to the patient as well as to the health professional the relationships settled between them are symmetrical and take place in the same level of interpersonal relationships. At this stage people with same dignity meet under different circumstances each one undertaking a different specific statute and performing a distinct role where one requires help and the other makes available his/her capacity to help. In 2008 the National Commission for the Vision Health elaborated a consultation document (site) named Good Practice in Ophthalmology – Assessment of Clinical Elements and Referencing, where the good practices in ophthalmology are explained.[13] This kind of promotion and education is according to us a great information source where the health professionals as well as the population in general can access to it. Everyone can get a set of information not only about prevention but about details on the signals and symptoms of the ophthalmological disease, thus contributing for his/her clarification and allowing a more sustainable medicine. Obviously if well informed he/she will widely understand his/her rights and duties because in order to decide as a patient or citizen he/she needs to be able to understand.

On the other hand it is widely contemplated as the citizen's rights the one to be informed as well as the option to refuse a treatment in the community regulation as well as in the national one (DRAFT LAW Nº414/XI/2nd). The Informed Consent is enshrined in the Portuguese law, in every level: constitutional, civil and deontological one and in a similar way in the Bill of Rights and Duties of the Patient, where it is expressed that he/she has the right to give or deny his consent, before any medical act or participation in investigation or clinical test. More recently it has been focused that the principles, values, duties and rights enshrined in the Bill of Rights and Duties of the Patient must in future answer and consider specific and private interventions. The examples to these are the duties, specific population rights like children, pregnant mothers, HIV-positive persons, handicapped or seniors, all of them deserve a preoccupation and more detailed assistance. When extensive to the health system users the knowledge of the patient's rights and duties enlarges his/her collaboration in the improvement of the care and services presupposing that the patient is listened in his/her considerations about the contents of the health care, service quality and the complaints forwarding. Certainly this Bill is assumed as a collaboration instrument and not a clashing one. It has as an ultimate goal to reaffirm the fundamental human rights at care provision and especially the protection of dignity and integrity of the human person as well as his/her right to self-determinism. It intends to promote the humanization in the assistance of all the patients, especially the vulnerable groups and aims to develop a good relationship between the patients and the health professionals and also stimulate a more active participation on behalf of the patient.

With the version that is now presented (new Bill) the goal is to take into practice the promotion of those rights and duties and in parallel "to collect opinions and suggestions for a progressive adjustment of the legal provisions to the principles that will be considered necessary to guarantee the civic and responsible fulfillment of these rights and duties".[14] The humanization of the health care will constitute the goal to be achieved and it will have an active participation of the health professionals and of the patients as well.

The patients will be aware of their rights and duties, benefiting the community of the inherent respect for human dignity.

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Conflicts of interest

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