

Bioethics in current Medical Ethics Code

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Abstract

This article aims to analyze and discuss the incorporation of Bioethics references in the present Medical Ethics Code adopted by the Federal Council of Medicine after two years of study. A research was carried out for all objects in the current code to verify which Bioethics foundations were included, seeking to accomplish a critical reflection from this investigation. Bioethics principles related to issues like autonomy, justice, beneficence/non-maleficence was widely covered in the new text. Other references were also observed, such as citizenship, human dignity, responsibility, and conflict of interest. In the Fundamental Principles were noted other core values relating to health care, respect, consideration, human rights, solidarity, non discrimination and research on human beings. In authors' opinion, it was demonstrated that professionals desire to establish doctor-patient relationships supported by ethical conduct. The new instrument sought to establish a balance between the maximum morality and the minimum morality of conformity to mandatory standards.

Key words: Bioethics. Codes of ethics. Medical ethics.



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Large portion of human knowledge became effective through writing ¹ and this legacy of beliefs transmitted generation by generation supports itself in cultural tradition and in the morality of a people. Thus, the norms responsible for foundation of any society were recorded throughout history by means of graphic signs.

Elaboration of moral codes follows the same script. The fundamentals of cosmologic and social articulation of civilizations point to the need to ensure permanence of codes for suitable social companionship ². Departing from this premise, one consolidated that the moral conflicts decisions were undertaken independently of the act of knowing the binomial right/wrong, but from the certainty that legal limits and from eventual penalties that regulate human relations ³. Therefore, the need of permanent enhancement of behavioral norms that pervade social companionship became a consensus ⁴. Reasons to build specific legislations



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are imperative to maintain harmonic behavior among social actors ⁵.

Medical ethics codes specify norms of physicians' moral behavior, which represents major conquest of modern society ⁶. However, this coded moral must be liable to periodic changes, following social tradition evolution, and progress of scientific knowledge, both of natural sciences and human sciences ². In this context, the Federal Council of Medicine (CFM) carried out the review of the 1988 Medical Ethics Code (CEM), through nomination of a National Commission, coordinated by former Vice-president Roberto d'Avila, who promoted a comprehensive consultation to physicians from all over the national territory, as well as from organized civil society ⁵. Commission members by reviewing resolutions issued by CFM after issuance of the 1988 CEM, as well analyzing CEMs from other countries, past Brazilian codes, and the eventual incorporation of some bioethical referential in the document to be elaborated.

Bioethics consolidated as applied ethics to situations involving decision-making on emerging moral conflicts ⁷. Since its establishment, in 1970s, it became an indispensable instrument to guide ethics reflection in human sciences realm ⁸. This article aims at analyzing incorporation of bioethics major referential to CEM current text, published by CFM, and to reflect on the essence of its fundamentals in current medical state of art.

The new Brazilian Medical Ethics Code

After two years of consultations to Medical Corporation and to organized civil society, the new CEM was approved in the 4th Medical Ethics Conference, in August 2009, in Sao Paulo. The text, approved and reviewed by means of CFM Resolution no.

1,931/09, was published in the Official Gazette of the Union, of September 24, 2009, Section I, page 90, and rectified in the same agency in October 13, 2009, Section I, page 173, and coming into force in April 13, 2010.

Two thousand, five hundred and seventy-five (2,575) suggestions submitted by professionals and organized civil society institutions were analyzed. The new CEM comprises 6 items in its *Forward*, 25 as fundamental principles, 10 human rights norms, 118 deontological norms, and four generalities.

The *Fundamental Principles* refer to valuable goals of broad and generic character that guide morality in the exercise of medicine. They expose big concepts, fitting in maximum category of morality, and they shall not be used as elements to open ethics-professional investigations and/or processes against physicians. They guide elaboration of deontological norms, considered as *minima moralia*, which are rules of mandatory compliance by every physician, and they describe specific factual situations of possible CEM transgressions, thus, constituting useful instrument for suitable control of professional exercise. All fundamental principles are presented as items, and they maintain content links with deontological norms, disseminated in way of articles. It will be possible to open ethical-professional investigations or processes based in these later only, which reveal funded evidences of deontological norms violations.

As other countries' medical councils have done already, CFM's CEM introduced some items with the objective to attend questionings supplied by the progress of scientific knowledge, and it had the concern to consider new humanitarian thesis, as well as those referring to respect for the environment. As outcome of this elaboration, the medical class got an instrument tuned regarding full citizenship exercise and the emerging ecocentric paradigm, which imposes as substitutes to current extreme anthropocentric currently in force.

Method

The survey was undertaken from a detailed analysis of CEM current text, in detailed evaluation of all articles, seeking to identify in which of them bioethical precepts were incorporated, either in conceptual terms or to what proposed content refers to. After this assessment, a reflection on the importance of including these precepts to contemporary medicine was carried out, considering, particularly, the Brazilian case, concerning this new code scope.

Referential of the principlialist bioethics and the new CEM

Hippocratic precept that advocates love for patient as a way of loving for medical art guided always the exercise of medicine⁹. The new CEM lists in twenty-five item of the *Fundamental Principles* values that regard this essential precept.

Among such values and principles stand out: dignity; the care for human being's health; continued enhancement of scientific knowledge; respect for the human being; patient's autonomy; social and professional responsibility, human rights; solidarity, interpersonal relationships; non-discrimination of people; acceptance governing norms related to research with human beings, and compliance to legal norms in force in the country ¹⁰.

Two items, in this part of CEM, deserve highlight: *I – Medicine is a profession at human being's and collective health service, and it should be exerted without discrimination of any nature; II – The target of all physician's attention is human being's health, in whose benefit he shall act with maximum zeal, and in the best of his professional capability* ¹⁰. These *Fundamental Principles*, set forth in the new CEM, show well the new code essence, committed with dignified exercise of medicine.

The principlist bioethics, emerged in the United States (USA) during the 1970s, introduced changes of major impacts within clinical decision-making scope in face of moral conflicts, and still represents useful instrument to mediate physician-patient relationship, although limited to referential of autonomy, beneficence, non-maleficence, and justice¹¹. It is worth highlighting that, despite CEM authenticates principlist bioethical precepts, this does not mean acceptance of model in its totality, but rather what one understands as principles *prima facie* pertinence.

Gracia⁸ hierarchizes principles, categorizing them as primary or absolute as *non-maleficence and justice*, and secondary or relative as *beneficence and autonomy*. However, these precepts are not always in a hierarchic disposition. In case of conflict among them, it would be convenient to establish when, how and what sets predominance of one over the other. Effectively, CEM does not perform this role, and it uses principles of principlist bioethics as a way to develop the ideology of the document.

Beneficence and non-maleficence

Beneficence presupposes a set of actions that seek to make compatible the best scientific knowledge and zeal for patient's health. Thus, the purpose is overcome the simple optimization of the best therapeutic conduct to become a summation of all possible benefits offered by the complex interpersonal physician-patient relationship¹⁰. It is worth to remember that in the paternalist model, predominant in the beginning of last century, only the physician with his knowledge was considered as competent to choose the best therapeutic conduct supplied to patient.

The non-maleficence, despite controversial, comprises with other three principles the foundations of principlism, and it proposed to not causing intentional damage ¹². Hippocratic aphorism is universally consecrated *primum non nocere* (first not jeopardize), whose objective is to restrict adverse or

undesirable effects of diagnostic and therapeutic actions.

Autonomy

Autonomy may be conceptualized as the capability to make decisions according to each individual's own values free of any external coercion. It is, according to Kant, human will capability to self-determine in accordance to a moral legislation set by himself, free of any factor alien to his will¹³. In Foucault's understanding, the sick people tend to lose *right to this own body, the right to live, of been sick, of healing and dying as they please*¹⁴, losing, thus, their autonomy. Considering the two premises, autonomy is understood herein as assuming decision about oneself, body and soul, in respect to each one's beliefs ¹⁵.

Medical paternalism, as counterpart, originated in Hippocratic ethics was marked always by the principle that the sick would be incapable to make autonomous decisions. Such conception guided medical practice since the most remote antiquity. Since mid-20th Century, a new reality imposes itself when court decisions ruled in the United States courts began to condemn physicians who disrespected their patients' autonomous decisions, which unauthorized the traditional paternalism of medical profession ⁵.

The new CEM contemplates physician and patient's autonomy. Items VII and XXI of the *Fundamental Principles* expose, respectively the autonomy of each of these interlocutors.

Item VII: Physician will exert his profession with autonomy, not been obliged to render services that are contrary to his conscience or to whom he does not desire, except in situations of absence of another physician, in cases of urgency and emergency, or when his refusal may cause damage to patient's health.

Item XXI: In the professional decision-making process, according to his conscience and legal provisions, the physician will accept his patients' choices related to diagnosis and therapeutical procedures expressed by the later, as long as adequate to the case, and scientifically acknowledged¹⁰.

Gracia ⁸ warns that patient's autonomy taken to extremes and converted in absolute and unrestricted principle is as senseless as Hippocratic paternalism, as it may mean the "abandonment" of patient and his wounding. Legislators' prudence included in current CEM a more cooperative and symmetric physician-patient relationship, without falling into the extreme of abandoning patient.

Justice

The principle of justice is known as the expression of distributive justice, which would be to contemplate the fair and equitable appropriation provided

by the techno-scientific progress by the entire society, in accordance to norms that respect social cooperation. However, in order to have real equity there is necessity of treating unequally the unequal¹⁶. According to this premise, it becomes possible to minimize social injustices in force in deeply unequal societies, as still happens in current Brazil, as well as in other contexts guided by the capitalist systems. It is fit to stress, nevertheless, that social inequalities are not exclusive of societies guided by the market, pre-existing in traditional societies, religious states, and tribal culture. Market economy, in this sense, and globalization just accentuate historical inequities.

The principle of justice establishes equity as basic condition, which could be evidenced as ethical obligation to treat each individual according to what is morally correct and suitable. The resources from public health should be distributed in balanced way, in order to achieve better efficacy the largest number of assisted people.

The new CEM foresees in its *Fundamental Principles* inclusion of the thematic from public health as field for equity actions, showing concern with matter, as exposed in item XIV: *Physician shall endeavor to improve medical services standards, and to assume his responsibility in regard to public health, education, and legislation concerning health*¹⁰. It is important to underline that, despite the frailness of the assistance model of the Health Single System (SUS), established in Brazil in 1980s, represents important progress in social policy

through more equitable allocation of resource in the health sector.

Pessini¹⁷ has the opinion that it is necessary to promote equitable access to medical, scientific, and technological development, sharing of scientific knowledge among professionals that participate in health promotion process. In this line of reasoning, bioethics presents itself as mediator of reflection about equity and justice. It is consensus that access to new technologies collides in high costs, which makes that only a small portion of the population usufructs these benefits. It is, therefore, necessary to articulate knowledge and awareness of rights to ensure balance in distributing the benefits of scientific progress to the largest possible number of people.

Justice has close relation with human rights, which comprise the set of civil, political, social, economic, and cultural rights, constituting the universality idea in the individuality principle and in the horizon of internationalization, indispensable condition to build global citizenship¹⁶.

Beyond the principlist horizon

If it is evident the presence of principlism in the designing of the new CEM, the assessment of articles in the code, undertaken in the research process, showed that several other principles and values related to bioethics were contemplated in text formulation, as well. Among these, those that

brought unarguable contribution for enhancing professional ethics in conceptual terms or regarding content are mentioned next.

Citizenship

Citizenship may be defined as the legal and political condition through which citizen holds civil, political, and social rights that enable him to actively participate in community life¹⁸. To be considered citizen presupposes unrestricted right to life, freedom, work, health, and education. It should be highlighted the distinction of civility, which would be urbanity in treatment among citizens¹⁹. In accordance, the Article 23 of the new CEM sets forth that: *It is forbidden to physician to treat human being without civility or consideration, to disrespect his dignity or to discriminate him in any way or under any pretext*¹⁰. For the first time, the word *civility* appears in CEM. In this context, one perceives evolution of the concept in the new code, in as much as it expands caring beyond purely technical limits, contemplating both meanings highlighted herein.

Citizenship, as every human characteristic, is the result of a practice, and it depends on the extensive dominance of educational, health, dignified housing, safety areas, and access to cultural goods in a harmonic relationship between the individual and the political community²⁰. Thus, citizenship concept is the result of synthesis of justice and belonging to a determined social group. The lack of consideration to the person and consequent disrespect to his human rights are observed in more vulnerable society groups²⁰.

The denial of the right to full exercise of citizenship in our country attests inequity, and marginalization of huge contingent of Brazilian who do not have even access to the most elementary social rights.

Human dignity

Medical ethics conceived in the Cartesian-Flexnerian model is coated with strong biologist accent. The obsession in keeping biological life at any cost ended in the so-called therapeutical obstinacy, and to *distanasia*²¹, situation that the new code dealt with much attention regarding psychosocial and spiritual aspects of patient. Ultimately, the document respects human dignity because it considers the finitude of life as a natural event and deserving adequate care.

In this aspect, CEM brought decisive contribution in terminality of life and palliative care. It is specified in item XXII that *in the irreversible and terminal clinical situations, the physician will avoid carrying out unnecessary diagnostic and therapeutic procedures, and he will provide to patients under his care all appropriate palliative care*¹⁰. The single paragraph in Article 41 reinforces also this aspect by adding: *In cases of incurable and terminal diseases, physicians shall offer all palliative care available without undertaking useless or obstinate diagnostic or therapeutical procedures, always taking into consideration patient's expressed will or, in his impossibility, of his legal representative*¹⁰.

One notices that the new CEM, still in the realm of human dignity, was careful in point out the respect due to future generations. Item XXV sets forth: *In applying knowledge generated by new technologies, considering their repercussions both in present and future generations, the physician will zeal so people are not discriminated for any reason connected to genetic heritage, protecting them in their dignity and integrity*¹⁰. In consonance, Article 16 specifies: *It is prohibited to physician intervening on human genome aiming its modification, except in genetic therapy, excluding any action with germinating cells that result in genetic change in descendants*¹⁰.

Responsibility

Medical responsibility refers to actions related to professional activities, and the consequences deriving from decisions regarding patient and community's health. Responsibility is one of fundamental ethical premises, and it is intrinsically connected to deliberation between the professional and patient preceding decision-making, to the undertaking of diagnostic and/or therapeutical procedures by the physician, as well any consequence resulting thereof²².

The new code, similar to previous ones, dedicates a whole chapter to deontological standardization of acts practiced by physician. It is worth stressing that Article 1 of Chapter III (which corresponds to Article 29 of previous code), which sets forth: *It is prohibited to physician to cause damage to patient, by*

action or omission, incompetence, imprudence or negligence. Also, this article single paragraph defines that *medical responsibility is always personal and it cannot be presumed*. Generally, physician's professional obligation is of means and not end. Therefore, he is not obliged to provide invariably cure to illness that patient suffers, but rather to employ all means made available by medical science, as well as to make available all his knowledge and experience to care for the patient.

Schramm²³ highlights that current society nourishes a culture of rights for children, adolescents, and elders, in addition to so many other representative of minorities, attributing to the State the responsibility of assuring them indiscriminately to all. Author states the need to establish a bond that responsabilize individuals and the State to achieve such desideratum, since it corresponds to the later the function of resources provider to attend community demands, and it is the duty of the first one to preserve the outcomes obtained by social advances.

Concerning responsibility, it is worth remembering, still, the concern of contemporary world with the conflict of interests in the health sector, above all, when implies distancing from the essence of care for the human being and aims at getting some sort of profit. Conflict of interests become apparent when secondary values, such as financial profit, prevail detrimental to primary interests, like patient's well-being or ethics in a

medical research²⁴. Moreover, it should be stressed that it is intrinsic to the capitalist system, since capital appropriate of the good health and treats it as a tradable product, making it similar to other consumption goods.

The item IX of the *Fundamental Principles* of the new CEM deals the issue of responsibility in face of conflict of interest when it established that *Medicine cannot, in any circumstance or form, be exerted as trade*. Thus, the code reinforces the idea that medicine, opposed to any trading activity, cannot sell illusions or stimulate consumption of the *good health*¹¹. In view of such exhortation, it is imperative that every physician be alert in order to not transgressing prudential ethical limits when participating in rendering professional services, board or managerial positions of institution, avoiding at all cost to get undue benefits from pharmaceutical products or medical equipment firms, as well as to make personal publicity that may harm medical category's image²⁵. This set of requirements prescribed by CEM goes toward the responsibility idea (personal, professional, collective, and social) that is present in bioethics.

Final considerations

Bioethics is applied ethics instrument that intends to establish a community of dialogue respecting health professionals' moral values, and those of patients cared by them. The conceptual efficiency of the discipline

and effectiveness of its application may be perceived in attentive reading of the new CEM, which evidences major bioethics referential incorporated to its text. This shows, unarguably, professionals' desire to establish a physician-patient relationship supported in ethical conducts that privilege non-excluding dialogue, and the respect for people from different moralities.

Every code of norms keeps close relations with scientific progress, and governing morality at the time of its formulation, which forces us to know its temporality and liability to future enhancements. Thus, we should shelter also this new document. Notwithstanding, the new CEM sought to set balance between the moral of maximums stated in the *Fundamental Principles*, and minimum morality of norms of mandatory compliance that describe specific factual situations that typify ethical transgressions liable to penalties. Therefore, the code not only defines, but it guides, promoting both action and ethical reflection, contemporary premises for applied ethics.

Finally, it remains to consider that the exercise of reflection presented in this article is an analysis that expresses authors' opinion, who, for participating in the National Commission to Review CEM, feel motivated to make public their pondering about how much this document advances in terms of contemplating bioethics referential and principles. We know that this first analysis is incomplete, because only now the codes begins to be "tested" in view

of the principle of reality. For this reason, we believe that other studies will be necessary, in the future, about the topic, particularly considering multiple deadlocks that may arise in clinic as consequence of advances provided by new medical technologies. However, even taking the risk of undertaking a partial analysis of current CEM, outlined by CFM to regulate and enhance physician-patient relationship in the Brazilian society, we could not point, now, the progress of the statutes in bioethics realm, which makes it a milestone to promote a fairer, equalitarian, and ethical society in our country.

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Resumen

La bioética en el actual Código de Ética Médica

Este artículo analiza y discute la incorporación de referencias de la Bioética en el actual Código de Ética Médica aprobado por el Consejo Federal de Medicina, después de dos años de estudio. A partir de análisis del nuevo código fue emprendido un análisis comparativo de los fundamentos y principios de la Bioética. El objetivo fue evaluar qué fundamentos y principios Bioéticos fueron incluidos en la actual versión del código, buscando establecer una reflexión crítica a partir de esta investigación. Se constató fuerte contribución de la bioética principialista en el nuevo texto en artículos focalizados en cuestiones relativas a la autonomía, justicia, beneficencia/no maleficencia. Fue verificado que otros referenciales también fueron contemplados, como ciudadanía, dignidad humana, responsabilidad y conflictos de interés. En los Principios Fundamentales fueron notados también valores esenciales referentes a cuidados con la salud, respeto, consideración, derechos humanos, solidaridad, no discriminación y pesquisa con seres humanos. O artículo concluyó considerando que el deseo de los profesionales en establecer relación médico-paciente amparada en conductas éticas está contemplado en este nuevo instrumento, que buscó establecer equilibrio entre la moral de máximos y la moralidad mínima de cumplimiento obligatorio de normas.

Palabras-clave: Bioética. Códigos de ética. Ética médica.

Resumo

Este artigo analisa e discute a incorporação de referenciais da bioética no atual Código de Ética Médica (CEM), aprovado pelo Conselho Federal de Medicina após dois anos de estudo. A partir de levantamento e análise do novo código foi empreendida análise comparativa aos fundamentos e princípios da bioética. O objetivo foi avaliar quais fundamentos e princípios bioéticos foram incluídos na atual versão do código, buscando-se estabelecer uma reflexão crítica a partir desta investigação. Constatou-se forte contribuição da bioética principialista no novo texto em artigos focados em questões relativas à autonomia, justiça, beneficiência/não maleficiência. Verificou-se que outros referenciais também foram contemplados, como cidadania, dignidade humana, responsabilidade e conflitos de interesse. Nos *Princípios Fundamentais* foram notados ainda valores essenciais referentes a cuidados com a saúde, respeito, consideração, direitos humanos, solidariedade, não discriminação e pesquisa com seres humanos. O artigo conclui considerando que o desejo dos profissionais em estabelecer relação médico-paciente amparada em condutas éticas está contemplado neste novo instrumento, que buscou estabelecer equilíbrio entre a moral de máximos e a moralidade mínima de cumprimento obrigatório de normas.

Palavras-chave: Bioética. Códigos de ética. Ética médica

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