MEDICAL ETHICS IN THE FACE OF EMERGING MEDICO-LEGAL ISSUES IN NIGERIA: BEING A PAPER PRESENTED BY YUSUF O. ALI SAN AT THE AFRICAN HALL, UNIVERSITY OF ILORIN MINI CAMPUS, ON 28TH AUGUST, 2008

INTRODUCTION

The word, "ethics" is derived from the Greek word 'ethos' which means customs and habits. It means something in conformity with moral norms or standard of professional conduct. The word relates to the precepts which should control moral behaviour. Ethics is that science of knowledge, which deals with the nature and grounds of moral obligations, distinguishing what is right from what is wrong.

Medical ethics make news but are far from new. From the formulation of the Hippocratic Oath in Ancient Greece, to the present day, doctors have debated among themselves the codes of conduct which should govern the art of healing These days, philosophers, theologians, lawyers and journalists are joining the debate. Outside interest, or interference as doctors sometimes see it, is not new either. Hippocratic was a philosopher. The Christian Churches through the centuries have asserted the right to pronounce on medical matters of spiritual import, such as abortion and euthanasia, and to uphold the sanctity of life. Islam is also in the fray.

The Hippocratic Oath, makes interesting reading Its first premise is that the doctor owes loyalty to his teachers and his brethren. Obligations to exercise skill for the benefit of patients health come second Abortion, direct euthanasia and abetting suicide are prohibited. Improper sexual relations with patients are banned. Confidentiality in all dealings with patients is imposed among others.

It is trite that it has become imperative for the medical profession to exercise a greater degree of caution while undertaking diagnosis and treatment of patients. It is also desirable for the patients to observe certain norms, so that they benefit most of the medical help sought and healthy relationship with the doctor/hospital.

RIGHTS OF PATIENTS

Medical law, lan Kennedy and Andrew Grubb declared, is essentially "..... a sub-set of human rights law. The fundamental nature of the relationship between doctors and patients amply proves this point. At stake, within the realm of medical law, is our right to make our own decisions about how we live our lives and how we die. Our interests in privacy and in family life, in having or not having children, are central to our dealings with health professionals.

Article 25 of the Universal Declaration of human Rights provides:

> "Everyone has the right to a standard of living adequate for the health and well being of himself and his family including food, clothing and medical care"

From the above, a patient has some inherent rights under the law and these can be summarized hereunder as follows:

1. A patient has a right to know the clinic/hospital rules, regulations and charges before getting treated/admitted.
2. A patient has absolute right to privacy, consultation, physical examination, case discussion, procedures and treatment are required to be confidential. You have a right to ask a person who is not directly involved in your treatment, examination, e.t.c not to be present
3. You have a right to know about the nature of your illness, and reports of investigations.
4. It is the patients right to know,

    (a) necessity of treatment,

    (b) alternative modes of treatment,

(c) risk of pursuing the treatment/undergoing a surgery including their inherent risks and complications,

(d) Probable duration of treatment,

(e) Prognosis (chances of recovery) of illness in the language you can understand.

5. A client has a right to ask the doctor to write in the prescription the name of disease he is suffering from, the finding of the doctor or in brief the probable diagnosis, the name and dose of the drugs he is dispensing and procedure and investigations he does or ordered to be done on him.
6. It is your right as a patient to seek consultant from another doctor/specialist.
7. It is your right as a patient to refuse further medical care. You can leave against medical advise, to the extent that it does not contravene any law. In case you decide to quit treatment against medical advice, you have a right to obtain details of investigations and treatment undergone.
8. Patient has a right to refuse reasonable treatment even if it is unreasonable to do so.
9. It is your right to get medical record
10. It is your right to obtain a medical certificate of illness/fitness.
11. It is a right of the relative/attendant of a deceased patient to obtain a death certificate from the doctor/hospital which last treated the deceased and,
12. It is your right as a patient, to examine and receive an explanation about the bill of the doctor/hospital and a receipt of the amount paid, regardless of the source of payment.

DUTIES OF MEDICAL DOCTORS IN NIGERIA

The laws and various Codes of Medical Ethics and Declarations have been enacted to regulate medical practice in Nigeria. Among these laws are:

2. Medical and Dental Practitioners Act, Cap LFN 2004

3. Hippocratic Oath,

4 Declaration of Geneva:

5.Declaration of Helsinki,

6. International Code of Medical Ethics:

The duties and obligations of a doctor can be summarized as follows:

(b) Duties to patient,

(c) Duties to the public,

(d) Duties towards law enforcers.

(e) Duties not to violate professional Ethics,

(f) Duties not to do anything illegal or hide illegal acts,

(g) Duties to other doctors and others in the medical world.

Because of time constraint, only two of the above listed duties will be examined ie (a) Duties to patient and (d) Duties not to violate professional ethics.

(a) DUTIES TO PATIENT

A medical doctor owes the following duties to the patients

(i) Standard of care, which an average person takes while doing a similar job in a similar situation. These include due care and diligence of a prudent doctor, standard suitable equipment in good repair, standard assistants, standard premises, standard proper record keeping for treatment given, surgery done, x-ray and pathological reports, not to experiment with patients: standard proper reference to appropriate specialist, observe punctuality in consultation, etc.

(ii) Doctor's duty of providing information to the patient regarding-necessity of treatment, alternative modalities of treatment, risks of pursuing the treatment, including inherent complications of drugs, investigations, surgery e.t.c.

(iii) Emergency care: A doctor is free to choose whom he will serve. He should, however, respond to any request for his assistance in an emergency on humanitarian grounds (A doctor is bound to provide emergency care on humanitarian grounds, unless he is assured that others are willing and able to give such care). It should be noted that prior consent is not necessary for giving emergency/first aid treatment. In emergency, medico-legal cases, condition of first being seen by medical jurist is not essential.

(iv) Consent for treatment: This is another major and important thing which a doctor must obtain before treating a patient. This must be given by a person who is conscious, mentally sound and without any fear, fraud or misrepresentation of facts.

(d) DUTY NOT TO VIOLATE PROFESSIONAL ETHICS

This is another very important duty of a medical practitioner and these can also be summarized as follows:-

(i) A doctor has a duty not to refuse professional service on grounds of religion, nationality, race, politics or social status.

(ii) Duty not to associate with unregistered medical practitioner and not to allow him to practice what he is not qualified for

(iii) Duty not to indulge in self-advertisement, except such as is expressly authorized by law. In this case, the identity of the doctor may properly be made known, his address or photograph should not be published and any appointment he may hold should not be mentioned and no suggestion of his possessing any special skill should be made.

(iv) Duty not to issue false certificates and bills;

(v) Duty not to attend to patient when under the effect of alcohol,

(vi) Information given by patient to be kept secret.

The oath of Hippocrates emphasizes the need to keep secrets.

The oath has this to say:

> "Whatever I may see or hear in the course of the treatment or even outside of the treatment in regard to the life of men which on no account one must spread abroad, I will keep to my self holding such things shameful to be spoken out."

However, if a doctor is accused by a patient, the doctor could disclose the truth with respect to the accusation or in a situation where fraud or deception is discovered. Also, if a criminal act is involved, the doctor should make every effort to bring this to the notice of the appropriate authority

(vii) A medical doctor should not talk carelessly about his colleagues.

(viii) He should not also write secret formulations, etc.

All these and more are acts the breach of which may amount to professional misconduct. Any Medical Practitioner who is guilty of these breaches, as well as any other offence, is guilty of infamous conduct in a professional respect. **Lord Justice Lopes** explained infamous conduct in a professional respect in the following words:

> *"If it is shown that a medical man in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonouorable by his professional brethren of good repute and competence, then it is open to the council to say he has been guilty of infamous conduct in a professional respect.''*

COMMON SOURCES OF LITIGATION IN MEDICAL PRACTICE

It is necessary for every doctor/medical establishment to exercise their minds individually and jointly to effectively give better service to patient's Human elements in medical care determines the patient's/attendant's reaction to an untoward event. Sources of discontent, such as tactless handling, trivial indignations or casual unpleasant remarks are causes of a large number of legal actions brought against doctors and hospitals.

Behaviour of the entire system including receptionist, junior staff, cleaners etc are very germane to this point. Also, proper documentation is another common source of litigation in Nigeria. A proper documentation of the date, time and history (in brief), positive physical findings, investigations, treatment and instructions to the junior staff and the patient is necessary.

Another very important source of litigation in medical practice is the issue of consent. Experience has shown that most of the consents being obtained in Government and private hospitals as well as nursing homes are not legally valid. In most of the cases filed against doctors, it is alleged that either no consent was obtained or a legally invalid consent was obtained Obtaining of a legally valid consent will thus be a cornerstone of protection against litigation.

Also, to prevent litigation, a physician must constantly remind himself that it is ill-advised to prescribe or administer to a patient, any medication without an appropriate medical indication. The physician must be aware of possible contraindications on the use of any drug:

(1) because of other medical problems the patient has,
(2) because of interference with other medications the patient is already taking, and
(3) because of any allergies to related drugs.

DISCIPLINARY MEASURES IN MEDICAL PRACTICE

Part of the disciplinary machinery are the Medical and Dental Practitioners Tribunal and Investigation Panel. The Medical and Dental Practitioners Tribunal is charged with the duty of considering and determining any case which engages the attention of the Tribunal or is referred to the Tribunal by another body, called the Medical and Dental Practitioners Investigating Panel

Section 15(1) of the Medical and Dental Practitioners Act Laws of the Federation of Nigeria 2004 provides:-

> *"There shall be established a tribunal to be known as the Medical and Dental Practitioners Disciplinary Tribunal (in this Act referred to as "the Disciplinary Tribunal), which shall be charged with the duty of considering and determining any case referred to it by the Panel established under subsection (3) of this section and any other case of which the Disciplinary Tribunal has cognizance under the following provisions of this Act.''*

It flows from the above provisions therefore, that the responsibility of the panel is to conduct preliminary investigations into allegations of professional misconduct against any medical or dental practitioner.

The Medical and Dental Practitioners Act has therefore in Section 16(2) of the Act stipulates the penalties for any Medical and Dental practitioner found guilt by the Tribunal as follows:

Section 16(2) "The Disciplinary Tribunal may give a direction under subsection (1) of this section-

(a) ordering the Registrar to strike the person's name off the relevant register or registers or

(b) suspending the person from practice by ordering him not to engage in practice as medical practitioner or dental surgeon, as the case may be, for such period not exceeding six months as may be specified in the direction or

(c) admonishing that person.

RECOMMENDATIONS

In order to keep up with "current accepted practice', doctors and others should update their knowledge and skills, and facilities should be updated according to the claims made by the clinic/hospital. It is the responsibility of every doctor to keep himself generally informed on mainstream changes in diagnosis, treatment and practice through leading textbooks and journals of his specialty.

Knowledge of medical ethics and laws in practice of medicine is very useful in improving practising attitude and methods of medical doctors.

Adopting attitude and body language of respect, care and concern is important. A high proportion of complaints is precipitated or escalated into legal action by a progressive breakdown of the doctor-patient communication, try to keep in mind the mental state of the close relatives/friends.

Be compassionate, be careful while informing about 'functional cases,. 'bad news and remember not to refuse patient's right to examine and receive explanation about the bill.

A doctor should not be averse to any suggestion of seeking a second opinion. Doctors who are open-minded and communicative are much less likely to be complained against as patients generally are extremely forgiving of errors made by a friendly and concerned medical practitioner.

In some Try to appreciate and make kind oral statements to the patient, his family members and to the other members of the treatment team. situations, a stern warning, a bit of forceful advice, perhaps even righteous indignation may be appropriate recourse in handling the recalcitrant, uncooperative patient. But harshness, excessive criticism, profanity or an injudicious, unwarranted tirade will do more to interfere with good patient rapport than almost any other action by a doctor.

The idea that justice is a moral issue that doctors can properly ignore is clearly mistaken. Few would disagree with a proposition that doctors should treat patients justly. Justice in this concept might be interpreted as meaning that patients are entitled to be treated fairly and equally by their doctors. The president should be treated no differently from a homeless person brought into casualty after he is found unconscious in a doorway Health professionals should not show preference for patients to enjoy a particular status, or provide substandard care for patient of whom they disapprove.

CONCLUSION

We should conclude this paper by listing the characteristics of the human physician which is listed out by the American Board of International Medicine which if imbibed, would help a lot in the practice of medicine in Nigeria. The characteristics are as follows:

- Encompassing integrity, respect and compassion

- Availability
- Expression of sincere concern.
- Willingness to take time to explain all aspects of the patients illness
- Attitude of being non-judgmental with patients who have different lifestyles, attitudes and values
- Alert to their own reactions to such situations which evoke strong negative (and occasionally strong positive) emotional responses and
- Consciously monitor and control their behaviour so that the patients" best interest remains the principal motivation for their actions at all times.

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