

Mini Review

Reconsidering Risk Disclosure in Medical Practice: Two Types of Physician Obligation

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Abstract

Patients' right to self-determination is sure to receive increasing support in the future. As a result, physicians will need to be much more respectful of patients' decisions, and their own discretion during treatment will be restricted. Nevertheless, physicians must also uphold their professional obligations to care for patients' life and health. When this obligation is emphasized, physicians' discretion tends to be more readily accepted. Physicians must also explain the risks involved in possible treatments, not only to respect patients' right to self-determination, but also to meet their own professional obligations related to preserving patients' dignity. In other words, physicians must honor both patients' right to self-determination and their own duty to provide medically appropriate care to the patient. The overlap of these two obligations does not appear to be fully resolved. The recent advent of the concept of libertarian paternalism—that is, interfering in individual decision-making to improve choosers' situation while trying to preserve their freedom of choice—offers hope for an ideal synthesis between these obligations. However, as libertarian paternalism has not yet been fully realized in medical practice in Japan, further investigation and dissemination of research findings is necessary.

Keywords: physician obligation, risk disclosure, self-determination, self-discipline

Introduction**The triumph of patients' right to self-determination**

Recent years have seen increasing numbers of patients suing physicians for damages due to physicians' lack of explanation of the risks of certain treatments. The disparity in information and expert knowledge between medical professionals and patients has reached a point where it can no longer be neglected in medical practice. Accordingly, the courts have established through precedence that physicians have a duty to explain their treatment to patients [1]. Through malpractice lawsuits, courts have stipulated that physicians are obligated to disclose treatment risks and provide relevant information. Doing so is expected to help alleviate this disparity and achieve greater equity between these parties.

The reasoning behind recognition of this obligation is twofold. First, the patient, as one party of the medical treatment contract, should be able to ask for an appropri-

ate explanation of their treatment. Second, and more importantly, patients' right to self-determination should be substantiated by law. The right to self-determination refers to a patient's right to determine what is best for his or her own body after receiving an appropriate explanation from a physician. This last point is key—sufficient information must be given by the physician—for a patient to be able to make up his or her mind [2]. This also implies that the physician must abide by patients' decisions. Indeed, the accountability of the physician was established in tandem with the introduction of the concept of informed consent [3]. Recognizing physicians' accountability helps ensure that patients' right to self-determination is preserved. For the same reason, physicians' own discretion in treating patients is restricted.

Nowadays, patients can readily acquire medical information through the internet and social networking

services and the uneven distribution of information between physician and patient might be becoming a thing of the past. In the not too distant future, both physician and patient might be able to build an equal relationship as parties in a medical treatment contract. In such an event, patients might be able to insist on their choice of treatment, which the physician would be obliged to follow (thereby further limiting physicians' discretion).

Two types of obligations: legal and professional ethical

Physicians must give a full explanation to patients not only to fulfill their legal duties, thus respecting patients' right to self-determination, but also to meet their professional obligation to care for the life and health of their patients. This is based on the concept of personal dignity. Moreover, physicians must build doctor-patient relationships through relational trust guided by professional ethics [4]. Physicians are ethically bound to encourage acceptance of the therapeutic recommendation judged to be in the patient's best interest. Physicians must prove worthy of patient's trust to treat patients under the trusting and supportive physician-patient relationship.

When this professional obligation to explain is emphasized, physicians' discretion tends to be more widely accepted. The physician must also balance efforts to preserve patient autonomy with other important principles, such as beneficence, non-maleficence, and justice [5]. Physicians' obligation to explain can be best understood as a balancing act between the patient's right to self-determination and allowing room for physicians' discretion [6,7].

When explaining possible treatment risks to patients, most physicians do not feel that they are fulfilling a legal obligation. Rather, they usually feel that the explanation is mandated by the ethics of the medical profession. The patient, on the other hand, seldom asks physicians for an explanation of the risks involved—they tend to believe that the treatment is safe. Only when they experience the negative consequences of a treatment do patients demand sufficient explanation of the risks of that treatment.

Besides the problem of who would be liable when a patient voluntarily opts for a treatment that results in adverse consequences of the patient's voluntary choice, it is unclear what obligation the physician has in complying with a patient's choice. The terms of the medical contract require nothing more than that the patient be free from the effects of physicians' negligence; however, physicians' professional ethics do require them to provide the best possible conditions for making a treatment choice.

If only the legal obligation existed, physicians would not be liable for poor choices made by the patient, provided that the physician has given what would be considered a fair and sufficient explanation to the patient. Conversely, if only the ethical obligation applied, the physician would be held responsible for any poor patient choices, even in cases where the physician had given an acceptable explanation.

What if patients make a medically poor choice despite having a good understanding of the choices before them? A strong reading of the ethical obligation would suggest that a physician has to continue explaining the consequences of the choice to the patient until patients accept physician's advice [8]. The reasoning behind this conclusion is that the preservation of patients' life and health is based on human dignity, or the principle that saving a human life should be prioritized over self-esteem. It becomes a problem that physicians manage both patients' right to self-determination and their ethical obligation.

Therefore, based on the strong theory of professional ethics and this interpretation of human dignity, physicians' accountability resides not only in patients' right to self-determination, but also in physicians' own professional ethics and the dignity of the patients. Accordingly, physicians are bound to honor the patient's right to self-determination as well as to give medically appropriate care to the patient to avoid violating his/her dignity. This interpretation of physician obligations is recognized by the profession, and is heavily based on standards set by physicians' professional ethics.

The recent advent of the notion of libertarian paternalism, or interfering with individual decision-making to improve choosers' situation while also preserving freedom of choice [9], offers hope for an ideal synthesis of the above two obligations [10]. One particularly relevant concept in libertarian paternalism is "nudging," which refers to steering individual decision-making to help make choosers comparatively better off without restricting their right to free choice. As the principle of libertarian paternalism has not yet been fully realized in medical practice in Japan, further investigation and dissemination of research findings are necessary.

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Conflicts of Interest

The author declares no conflict of interest.

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