

## Lecture 3.1: Medicine and medical ethics

Some good background reading for this lecture:

Paul Starr: *The Social Transformation of American Medicine* (1982)

Rosemary Stevens: *In Sickness and in Wealth* (1989)

David Rothman: *Stranger at the Bedside* (1991)

Albert Jonsen: *The Birth of Bioethics* (2000)

### *The Story of Asclepius:*

*According to legend, the first physician, Asclepius, was the child of a mortal and a god. His father was Apollo. His mother was the daughter of a king of Thessaly. Coronis was unfaithful to Apollo, and [Artemis](#), Apollo's twin sister, killed her for her unfaithfulness. Coronis was placed upon a funeral pyre. As her body started to burn, Apollo felt sorrow for his unborn son and snatched the child Asclepius from his mother's corpse, saving him from death. Apollo then handed Asclepius to a Centaur ([Chiron](#)) who became his tutor and mentor.*

*Chiron taught Asclepius the art of healing. Asclepius also acquired the knowledge of surgery, the use of drugs, love potions and incantations, and according to one source, Athena gave Asclepius a magic potion made from the blood of the [Gorgon](#). Legend tells that the blood of the Gorgon has a different effect depending from which side the blood was taken. If taken from the right side of the Gorgon, it has a miraculous effect and is said to be able to bring the dead back to life, but taken from the left side it is a deadly poison.*

*With these gifts Asclepius exceeded the fringes of human knowledge, and cured many illnesses. But one day he offended the high god, Zeus by accepting money in exchange for transgressing the limits of his practice, by raising the dead. In the eyes of [Zeus](#), Asclepius' action upset the natural order of the universe - a mere mortal helping man evade death. Zeus sent down a thunderbolt, killing Asclepius.*

*At the same time, Zeus realised the good Asclepius had brought to man. So he made him into a god, placing him among the stars, transforming Asclepius into the constellation Ophiuchus (the serpent-bearer). The snake was used in the healing ritual; non-poisonous snakes were left in the dormitory where the sick slept overnight on the bare ground.*

*The cult of Asclepius became very popular during the 4<sup>th</sup> century BC and the cult centres (known as an Asclepieion) were used by priests to cure the sick. Invalids also came to the shrines of Asclepius to find cures for their ailments (in the same fashion pilgrims visit Lourdes today.) It is believed that Hippocrates, a great doctor of antiquity, plied his trade on the island of Cos, where many Asclepieions were located.. It is also said that Hippocrates was a descendant of Asclepius.*

## **I: Medicine and Professional Ethics**

It is safe to say that at the beginning of the 20th century, the physician dominated health care like a colossus. The ethics of healthcare for the majority of the century was medical ethics, with a long and distinguished history. The Hippocratic oath dates to the 5<sup>th</sup> century BC; and Hippocrates himself, myth tells us, was the descendent of a child of the gods. Insofar as medicine takes Hippocrates as its founder and guiding spirit, it is a 2500 year old tradition.

The turn of the century physician had complete control of the treatments and therapies available to the patient. In the early history of medicine in America, the physician was located in the community and often visited his patients in the homes. As more complex treatments became available because of the scientific and technological advances in medicine, the hospital began to assume a larger role in medical treatment.

Both birth and death (as well as increasingly complex diagnostic, therapeutic, surgical or life-supporting interventions) gradually migrated into institutional settings. (Recent calculations suggest that in the US 90% of births and 80% of deaths took place in institutions by the end of the century.) The physician was the source of patients for the hospitals, to which he admitted his patients. He practiced in hospitals which for the most part he ran. Nurses carried out his orders, and other health professionals reported to him and provided services at his discretion. Even today the role in hospital administration of the medical board (the physicians with admitting privileges to a given community hospital) remains strong.

The physician was a professional—indeed, the very model of a professional. When sociologists began trying to define professions and establish criteria for what it meant to be a member of a profession, the physician, along with the judge and the priest, was the example to which they looked. Medicine was a “calling” that demanded of its practitioners a publicly-declared vow of dedication or devotion to a way of life: the relief of human suffering as their highest duty, and a fiduciary relationship to their patients. The following characteristics are very important in understanding the extent to which the physician is a professional.

***Characteristics of a profession:***

**Expertise:** it is his command of a special expertise which justifies admission to membership in a profession. Medical education in early America was an apprenticeship: you learned how to be a doctor by following an older, respected, physician around for a number of years. Since the time of Hippocrates medicine has been considered a specialized body of knowledge which must be mastered and is handed down only to selected novitiates, rather than being general knowledge. Continuing education, to keep abreast of advances in the field, is an important contemporary requirement of maintaining that expertise.

**Licensure:** After the Flexner report was published in 1910, medicine systematized medical education in a limited number of medical schools, accredited by organized medicine. Admission to the profession is controlled by the profession. In order to practice, you must attend one of the accredited schools and pass appropriate exams. The granting (and suspending) of license to practice is in the hands of the profession itself. Medicine as a profession is self-regulating and self-policing.

**Control over an area of practice:** Standards of care are set by the profession as a whole, and adherence to them is the responsibility of individual professionals, as judged and enforced by their peers. The professional model is not comfortably responsive to outside regulation, whether moral, legal or bureaucratic. In the body of many of the court cases we will discuss in the course of the term, judges explicitly defer to their fellow professionals in determining what counts as professional practice and standard of care.

**Code of ethics:** Medicine as a social institution and profession is established as such by the larger society. A territory is thus staked out within which the strictest standards of behavior are constrained. Integrity and character are the major determinants of the ideal physician in the classical model, and the profession is defined by its internal ethics, especially the ethics of human service.

This is a really important point, and it needs to be underlined, I think. To be a physician is to have a code of ethics, and to have an ethical position of a certain sort.

Professional ethics is one variety of *agent-centered* ethics. The physician by accepting that role has acquired ethical obligations determined by that role, which constrain his behavior in various ways. Compassion and care for the patient are central to the physician's personal identity as well as his social role.

We often talk about this as “professional autonomy” or “professional integrity.” In exchange for being allowed exclusive access to a realm of practice, the medical professional agrees to abide scrupulously by the ethical obligations of that practice. His failure to do so is a failure not only to himself as an individual, but also to the profession which he represents—indeed, embodies.

The ‘code of ethics’ of medicine has changed over the centuries. Compare the AMA’s 1996 version with the Hippocratic oath; there are some interesting differences.

Hippocratic Oath, translated into English.<sup>[3]</sup>

“ I swear by [Apollo](#), [Asclepius](#), [Hygieia](#), and [Panacea](#), and I take to witness all the gods, all the goddesses, to keep according to my ability and my judgment, the following Oath.

To consider dear to me, as my parents, him who taught me [this art](#); to live in common with him and, if necessary, to share my goods with him; To look upon his children as my own brothers, to teach them this art.

I will [prescribe](#) regimens for the good of my patients according to my ability and my judgment and never do harm to anyone.

I will not give a lethal drug to anyone if I am asked, nor will I advise such a plan; and similarly I will not give a woman a [pessary](#) to cause an abortion. (=prohibition of euthanasia and abortion)

But I will preserve the purity of my life and my arts.

I will not [cut for stone](#), even for patients in whom the disease is manifest; I will leave this operation to be performed by practitioners, specialists in [this art](#). (*medicine v. surgery*)

In every house where I come I will enter only for the good of my patients, keeping myself far from all intentional ill-doing and all seduction and especially from the pleasures of love with women or with men, be they free or slaves. (= don't sleep with patients!!)

All that may come to my knowledge in the exercise of my profession or in daily commerce with men, which ought not to be spread abroad, I will keep secret and will never reveal. (=medical confidentiality)

If I keep this oath faithfully, may I enjoy my life and practice my art, respected by all men and in all times; but if I swerve from it or violate it, may the reverse be my lot. ”

American Medical Association's **Principles of Medical Ethics** (1996)

I: A physician shall be dedicated to providing competent medical services with compassion and respect for human dignity.

II: A physician shall deal honestly with patients and colleagues, and strive to expose those physicians deficient in character or competence, or who engage in fraud or deception. (= self-policing)

III: A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient. (=advocacy for patients)

IV: A physician shall respect the rights of patients, or colleagues, and of other health professionals, and shall safeguard patient confidences within the constraint of the law. (= confidentiality)

V: A physician shall continue to study, apply and advance scientific knowledge, make relevant information available to patients, colleagues and the public, obtain consultation, and use the talents of other health professionals when indicated. (= *advancement of medical science*)

VI: A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical services. (= *basis for 'fee for service' medicine in US*)

VII: A physician shall recognize a responsibility to participate in activities contributing to an improved community.

## II: The Birth of Bioethics

I want to make a big point of the continuity and the long-standing tradition of medicine, as well as the differences between the two oaths, because it is important for understanding the last quarter of a century, and the birth of bioethics.

### 1. Historical preconditions:

a. Medical research: became a large scale enterprise during WW2.

(Indeed, war has always been a great boon to medical science; with the invention of new weapons, like the introduction of napalm in the Vietnam War, treatment of burns has greatly improved world-wide; we're hoping for improvements in the treatment of brain injuries with the proliferation of headwounds in Iraq...)

b. Since Flexner's attempts to put medicine on a scientific footing, with his reform of medical education in 1910, there has been increasing pressure on medicine to advance medical knowledge (resulting in what amounts to an institutionalized conflict of interest—what I refer to (in an article on the main website) as the 'Janus-face' of medicine)

c. The NIH were established in 1945 c budget of \$700,000: federally funded source of medical research money, iff federal regulations are adhered to.

With the gradual development of medical technology, it turns out that docs can do more than just offer comfort.

In the second half of the last Century, medicine began to find itself more and more implicated in, and indeed, sometimes in the center of, various social transitions:

changes in practice of medicine: specialization, hospitals, class isolation

social climate of the '60s: civil rights, feminism, *Our Bodies Our Selves*

The mutual involvement of responsibility and authority is greatly complicated by an idiosyncratic national tradition (discussed in sympathetic detail by Atul Gawande in a recent New Yorker article): the tradition of reimbursing the cost of medical treatment through employee-based medical insurance (conjoined c rising costs): (= *NO national health system*)

### 2. Research Ethics 1966—1976

It is the same training that prepares a person for medical practice, and for medical research, the advancement of medical science. So thinking about health care ethics means considering not only the requirements of physician patient relationships—but considering as well the sometimes different conditions that surround medical research. In the 1960s there began to be heightened attention paid to ways in which medical research practices were at odds with therapeutic medical practices:

Beecher's article in the NEJM about abuse of patients in research (1966)

Jewish Chronic Disease Hospital (1963)

Tuskegee syphilis study (1932-1972)

human radiation experiments

Nuremberg Trials in 1946

Results: federal regulation on human experimentation

1974: National Commission for the Protection of Human Subjects

(issued the Belmont Report)

. formal process of informed consent

. mandated prior group review of all research protocols by IRBs

3. The Courts and Medical Decision Making:

In the 70s courts began to get involved to define rights of patients and surrogates to make decisions re end of life care and life sustaining treatments (see “Cases” sheets)

1976: the case of Karen Ann Quinlan

California passed the first legislation authorizing living wills

1982: Baby Doe laws passed (and quickly retracted)

The “Birth of Bioethics” represented several fundamental changes.

Much of what physicians had done as prerogatives of their professional role began to be questioned by non-physicians, the “strangers at the bedside” of Rothman’s title. Decisions that had been the prerogative of the medical community were increasingly subjected to public scrutiny, legal review, and wide publicity.

The public—in the form of federal commissions as well as of consumerist activism—began to react in ways that reduced physician autonomy: laws and regulations, but also more questions to doctors.

As philosophers, theologians, lawyers, sociologists, anthropologists, historians began to adopt a more critical stance on medical practice, standards and patterns of ethical judgment were introduced and began to gain currency that were NOT reducible to agent-centered, role-determined, professional ethics.

Medicine, the ethical heir of Aesclepius, son of Apollo, was challenged by what is now at MOST a 30 year old upstart. The relation between the two is not always an easy one.