



Moral responsibility of healthcare personnel

Moralna odgovornost zaposlenih u zdravstvu

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“In civilized life, law floats in a sea of ethics”

Earl Warren

Introduction

Without ethics, law could not exist. Right is a moral power in the same way as duty is moral need, wrote Leibniz. If moral norms are, for any reason, secretly and incomparably violated in one segment of society, this will some day result in the violation of those norms in other areas as well¹⁻³.

The most severe violations of ethics in everyday life are manifested as corruption, conflict of interest and mobbing. Therefore, in addition to legal responsibility, the effect of moral responsibility for such deviant behavior is particularly important to every society oriented towards progress and humanism.

Health care system is supposed to be the foundation of each humane society. The Public Health Law⁴ of our country regulates the right in public interest by establishing conditions for the preservation and improvement of public health by comprehensive social activities.

Corruption affairs in a health care system certainly severely compromise the humane mission of this very important social activity. After all, the majority of physicians and other medical staff carry out their activities responsibly, professionally and honestly under extremely difficult working conditions. That healthy part of the system need to be preserved, encouraged and further strengthened. Moral norms are frequently neglected. Balzac used to say that society did not live on moral ideas only. However, the power of character is above intelligence.

Conflict of interest and public trust

The Constitution of the Republic of Serbia stipulates that no one can carry out a state or public function which is

in conflict with their other functions, activities or private interests (Article 6, Paragraph 1)⁵. Also, everyone has the right to be truthfully, completely and timely informed about issues of public interest and the media are obligated to respect that right (Article 51, Paragraph 1)⁵.

The Law on Preventing Conflict of Interest in Exercising Public Functions stipulates that a public officer shall carry out their function taking care neither to subordinate the public to the private interest nor to bring the two in conflict. The conflict of public and private interest occurs when a public officer's private interest affects or may affect the exercise of their function (Article 1)⁶. In line with that, a public officer must neither be in any relationship with persons who might affect their impartiality in performing the public function nor use the public function for gaining any sort of benefit for themselves or a related person⁷. According to this Law, a public officer shall immediately inform the authority that elected or appointed them and the Government Committee on any pressure or unforwarded influence they are exposed to in performing their function while the Government Committee shall make available to the public the data and documents on any pressure or unforwarded impact a functioner has been exposed to while performing their duty as well as on their functions in public companies, institutions or any other legal entities with partial state ownership and other businesses (Article 11, Paragraph 1 and Article 30, Paragraph 1)⁶.

According to the Law on Free Access to Information of Public Interest, it is considered that justified public interest exists always when there is information available to public authority (in terms of this Law a public authority body is a legal entity established or financed in total or most part by a public authority) which is related to compromised and/or protection of public health and environment and, if there is other information available to public authority, it is considered that the justified interest of the public is to know about

such interest, except if such public authority proves to the contrary. (Articles 3 and 4)⁸. Also, a confidential data is not the data indicated as secret in order to hide a criminal act, exceeded authority or abuse of official position or any other illegal act or action of a public authority (Article 3)⁹.

Speaking about health care system, the countries in the Region are evaluated higher than we are. According to the Rulebook on Indices of Healthcare Quality, the quality indices include both those of healthcare facilities performance and those related to the performance of the Commission for the improvement of quality of work, acquiring and renewal of personnel knowledge and skills, keeping waiting lists, patient safety, user satisfaction with services of healthcare providers and personnel satisfaction (Article 2)¹⁰. For example, The Rulebook on the Continuing Education Requirements for Healthcare Professionals and Healthcare Associates¹¹ specifies the type, programs, method, procedure and duration of continuing education, facilities and associations that can conduct a continuing education course, criteria for accreditation of continuing education programs, and other important issues for conducting continuing education of healthcare professional and associates¹².

Unfortunately, in its response to the European Commission Questionnaire, the Government of the Republic of Serbia deliberated that healthcare system was in the first place by corruption (Chapter 23, question 36). The introduction, within the Ministry of Health, a separate organizational department for fighting corruption would certainly contribute to approaching the fight against corruption with much more responsibility.

Ethical principles in health care

A doctor's duty is to provide medical help equally to everyone irrespective of their age, gender, race, nationality, religion, social status, education, social background or any other personal characteristic. At that, the doctor must respect everyone's human rights and dignity (Article 4)¹³. A doctor applies their knowledge and skills in a responsible manner and according to the Ethical Code principles. He/she must not cooperate with individuals and institutions and associations that abuse the public trust by advocating uncontrolled and professionally unproven medicines and therapeutic procedures and must be aware of the fact that every thoughtless, dishonorable, humiliating and any other for a doctor inappropriate action will adversely affect other doctors and healthcare personnel, and the healthcare system as a whole. Any public authority and public resource abuse aiming at personal enrichment is also dishonorable for a doctor (Article 16, Paragraph 1 and Article 18, Paragraphs 2 and 3)¹³. Doctors perform their jobs in a professionally and ethically irreproachable manner and their professional relationship with patients must not be conditioned by any unethical reason (Article 41)¹³. The duty of the members of the Medical Association is to reject any professional act opposed to the professional ethical principles¹⁴ of the Ethical Code or binding international documents. The Association shall assist them by its reputation and, as required, remedies, and undertake

action against doctors who violate the provisions of the Ethical Code (Article 80 and Article 81)¹³.

Ethical obligations and responsibilities of dental doctors

The ethical principles and rules of conduct set out in the Ethical Code of Dental Doctors¹⁵ involve compliance with positive regulations, general and specific professional and ethical principles that specify the conduct of dental doctors towards: the patients, peers, associates and the Serbian Dental Association. This Code specifies the rules of conduct of dental doctors, the members of the Serbian Dental Association, irrespective if they work in the public or private sector, and dental doctors serving their mandatory internship, who perform their profession in the Republic of Serbia, intended to preserve the reputation and dignity of the dental healthcare activity. The Association is obligated to initiate a procedure before the Ethics Committee and Court of Honor against dental doctors who fail to comply with that Code (Article 1 and Article 2)¹⁵.

The dental profession is neither an entrepreneur nor commercial activity since in conducting it, dental doctors are not primarily led by their material benefit but rather by the welfare of their patients, one of the main duties of dental doctors being the obligation to keep the reputation and dignity of the profession both in their dental work and private lives (Article 3, Paragraph 1 and Article 5, Paragraph 2)¹⁵. The violation of ethical principles and legal norms results in moral and legal accountability. Moral accountability is the issue to be decided on by the Ethics Committee of the Association, the Court of Honor of the Association, and by professional associations, and the violation of moral rights and principles leads to sanctions: from warning to the exclusion from the professional organization and ban on professional activity.

Ethical principles of pharmacists

The Ethical Code of Pharmacists of Serbia¹⁶ promotes the principles of professional ethics in order to establish ethical conduct by the members of the Serbian Pharmaceutical Association (SPA) in the performance of their pharmaceutical healthcare activity. The foundation of the Code consists of the principles including the established ethical principles, fundamental ethical principles and ethical values applicable in healthcare in order to establish ethical conduct of the members of the Association. For example, a pharmacist neither participates in nor supports advertisement campaigns of medicines and/or medical devices which are non-compliant with legal regulations and which serve for spreading information that is misleading to the general public.

Responsibility of the members of Serbian Associations of Healthcare Professionals

The Association of Healthcare Professionals takes care of the reputation of its members and/or ensures that

healthcare activities are carried out in line with the Ethical Code, and provides assistance to the citizens in obtaining the rights to health care in case of unprofessional or unethical conduct of the Association members (Article 8)¹⁷. The Association of Healthcare Professionals is obligated to inform the public of all issues falling under its authority, and notify the Ministry of Interior, competent judicial authorities and the Ministry of Health on disciplinary procedures taken against its members before the bodies of the Association, and on the procedures for issuing, renewal or withdrawal of licences if the given procedures give rise to a doubt that a criminal act has been committed (Article 35, Paragraph 1 and 2). A member of the Association shall be brought to the Court of Honor for disciplinary violation if, by acting or failing to act, that member violates their professional duty or the reputation of the Association (Article 39) in the event that they: act contrary to the provisions of the Healthcare Law and Health Insurance Law while providing health care to patients; violate the Ethical Code; perform their healthcare duty unprofessionally and/or contrary to the current developments in the medical, dental or pharmaceutical practice, or make a professional mistake; discredit the profession by their conduct towards patients, other members of the Association or third parties; abuse the health insurance resources while performing healthcare activities; fail to perform the obligations of a member of the Association set out by law, statute and other general acts of the Association. The Association Statute sets out other violations of professional duty or reputation of member of Association. The initiation of a procedure before the Court of Honor becomes obsolete one year after the violation of the professional duty and reputation of the member of Association set out in Article 40 of this Law, while the execution of the ordered measure set out in Article 43, items 1–4) of this Law becomes obsolete after six months from the date of validity of the decision on the ordered measure (Article 47, Paragraph 1 and 2)¹⁷.

According to the Law on Associations of Healthcare Professionals, neither criminal or offence responsibility nor the responsibility as a member of the Association excludes disciplinary responsibility of the member of the Association (Article 40). The Court of Honor may order one of the following disciplinary measures for the above-mentioned violations of the professional duty or reputation of the member of the Association: public warning; fine of up to 20% of the average monthly salary in the Republic for the month preceding the month in which the fine is ordered, calculated according to the data of the competent statistical authority; temporary prohibition of independent conduct of certain health care activities; temporary prohibition of independent conduct of healthcare activity. Disciplinary measures set out in Article 43, items 1 and 2 of this Law are ordered for minor violations of professional duty and reputation of members of Association. The disciplinary measure set out in Article 43, item 2 of this Law can be ordered for the duration of one to six months. The disciplinary measures set out in Article 43, items 3 and 4 of this Law are ordered for severe violations of professional duty and reputation of members of Association. The disciplinary measures set out in Article 43, items 3 and 4

of this Law cannot be ordered for periods shorter than six months or longer than one year, exceptionally up to five years (Articles 43 and 44)¹⁷.

Courage or obligation of whistleblower

A success of the fight against corruption is not possible without determinate and honorable people, whistleblowers who, despite threats, have sufficient civil courage to point to abuses and corruption in their working environment¹⁸. The task of whistleblowers is included in the Code of Professional Ethics of the Serbian Medical Association¹³ in the provision setting out that a doctor is obligated to inform the Association about their observations and attitude related to unprofessional and criminogenic acts and activities in the domain of diagnostics and treatment and to request legal and social support (Article 16, Paragraph 2). A member of the Association has the right and obligation to inform on every violation of the Ethical Code provisions the Ethics Committee of the Association taking care of the enforcement of the Ethical Code pursuant to the law and Association's Statute. The member of the Association has also the right to file applications and proposals to the Ethics Committee of the Association related to issues in the jurisdiction of the Ethics Committee, and to be provided with the responses to them on request (Article 79). Also, a doctor is obliged to take the active part in anti-corruption activities in the healthcare system with the support and involvement of the Association and competent public and other authorities and organizations, as well as non-government entities (Article 17).

The Ethical Code of the Serbian Association of Nurses and Medical Technicians¹⁹ specifies the basic ethical principles of the performance of professional duties of the members of the Association, the attitude of the members of the Association towards the patients, and inter-relationship of the members of the Association. The whistleblower rules are also contained in this Code in the provisions setting out that nurses and medical technicians who notice that their colleagues are violating the ethical principles of their profession should warn them and try to solve the problem in an informal way and that, if the obvious violation of this Code cannot be settled amicably, their duty is to notify the Ethics Committee of the Serbian Association of Nurses and Medical Technicians which will undertake certain action. Nurses and medical technicians must not submit notifications aiming at inflicting injury and humiliation of another but must strive to protect the profession; to that end, they must cooperate with the disciplinary authorities of the Serbian Association of Nurses and Medical Technicians.

Otherwise, the duty of a whistleblower to notify of a doubt of corruption is set out in the Public Officers Law²⁰. Therefore, a public officer or employee shall inform their supervisor or manager in writing of any knowledge of a corruption act performed by a public official, public officer or employee of a public authority they work with, and shall enjoy the protection set out by law from the date of such written notification. (Article 23 a). As for the protection of whistleblowers, it is laid out in the Code of Conduct for

Public Officers²¹ in Article 18 related to the preservation of the standard of conduct and mobbing prohibition. A public officer who thinks that they or any other public officer is requested to act in a way which is not in line with this Code, shall inform their manager of that in writing and shall, as a consequence of such information, neither be placed in an unfavorable position related to other public officers, nor harassed (mobbing) while performing their duty or exhibiting their rights in the authority.

By the Decision of the Minister of Justice and Public Administration, issued in September 2013, a working group was established in order to prepare the draft law regulating the protection of whistleblowers, which working version is supposed to be generated by the end of the year.

Whistleblowers' courage and consistency sometimes result in the harassment at their workplaces. The Law on Prevention of Harassment at Workplace²² prohibits any form of harassment at and related to workplace, and the abuse of the right to protection from harassment (Article 5). An employee has the right to protection from harassment behavior (Article 10, Paragraph 2). According to the Rulebook on Employer and Employee Conduct for the Prevention and Protection from Harassment at Workplace²³ the harasser employee, and the employee who abuses the right to protection from harassment, is responsible for violation of work discipline and/or workplace duty, pursuant to the Law (Article 9).

The Labor Law of Montenegro²⁴ specifies the prohibition of mobbing by the prohibition of any form of harassment at workplace (mobbing) and/or any repeated behavior towards an employee or group of employees, which represents the violation of dignity, respect, personal and professional integrity, position of the employee creating fear or hostile, humiliating or offensive environment, aggravating working conditions or leading to employee isolating themselves or persuading them to cancel the work contract on their own initiative.

Public attention has been drawn to the case of a healthcare employee who pointed to a work irregularity in

the institution she was employed with, who subsequently got a warning before the termination of her employment contract.

Conclusion

Justice only brings moral victories and should be the basis of any society. All users of health care need to have equal access to those services. Healthcare laws and ethics greatly overlap considering that the conduct of healthcare professionals should reflect the concern for welfare, dignity and health of any man. Our country also needs the business ethics for better future managers. But is the value of social power accompanied by responsibility? However, the best protection against corruption in healthcare consists of the proper and unbiased evaluation of work and work results of each employee.

Any concrete and efficient act of protection of whistleblowers would be a clear sign of the political will on the top level to fight corruption in Serbia. Today, efforts are obvious to improve the position of whistleblowers. What is missing? Unfortunately, the lack of legal protection is observed as well as the absence of material support in case of a whistleblower losing job. Analysis of the model of whistleblower protection in other countries would also help as well as scientific gatherings dedicated to this topic that would be initiated by the public trustee. Adoption of the Law on whistleblower protection would be the most important step in terms of encouraging such persons to make their decision to report misconduct at work easier.

While Balsac considered perseverance the most needed of all virtues and the highest expression of strength in all human acts, indeed, according to Masaryk, the complete moral reform cannot be achieved without the light of education and careful upbringing. The ethical principle is to think good and to act in such manner everywhere and in any life and creation environment. This paper as well was driven by such wish.

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