

Reflections

Ethical and legal issues in aesthetic surgery

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ABSTRACT

Rapid growth and expansion of plastic surgery in general and aesthetic surgery in particular in the past decade has brought in its wake some confusions particularly raising questions for the surgeons conduct towards his colleagues and the patients in the light of ethical requirements. Some thoughts from eminent thinkers form a backdrop to consideration of theories of medical ethics. In this article raging and continuous debates on these subjects have been avoided to maintain the momentum. Apart from the western thoughts, directions from our old scriptures on ethical conduct have been included to accommodate prevalent Indian practices. The confusion created by specialists advertising their abilities directly to the lay public following removal of ethical bars by the American Courts as also latitudes allowed by the General Medical Council of Great Britain have been discussed. The medical fraternity however has its reservations. Unnecessary skirmishes with the law arose in cosmetic surgery from the freedom exercised by the police to file criminal proceedings against attending doctors in the event of a patient's death with or without any evidence of wrong doing. This has now been curtailed in the judgement of the Supreme Court of India^[1] where norms have been laid down for such prosecution. This has helped doctors to function without fear of harassment. An effort has been made to state a simple day-to-day routine for an ethical doctor-patient relationship.

KEY WORDS

Aesthetic surgery; legal; medical ethics

INTRODUCTION

The demand for aesthetic surgery is an ever-increasing phenomenon in the modern world including India. Aesthetic surgery brings immediate gratification to the patient and the surgeon. Joseph E. Murray, Plastic

surgeon and Nobel Prize winner, reminded us:

“We have to be careful that our educational efforts do not lead us into producing not surgeons but technicians selling their skills in the market place. We are physicians primarily, surgeons by choice and plastic surgeons for the joy of living...The prime purpose of the medical profession is to give trustworthy service of the highest quality in matters of health”^[2,3]

Ethics

Thomas Huxley wrote: “No human being or society composed of human beings ever did or will ever come to much unless their conduct was governed and guided by the love of some ethical idea”.

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Ethics is defined as the philosophical inquiry into the nature and ground of morality.^[4] While medical ethics involves the application of ethical theory and moral reasoning to medicine and is covered by two theories-teleology and deontology.

Teleology from the Greek “telos” or end assesses the rightness and wrongness of actions in terms of their consequences. The most prominent teleological theory is utilitarianism. A major distinction in utilitarian thought can be drawn between those theories, which conceive utility only in terms of happiness or pleasure - the hedonist and those who argue that other values, such as knowledge, health, friendship, beauty also matter - the pluralist. The action’s outcome determined its morality. For example, if no adverse effects, result from euthanasia, either in a particular case or in general, then euthanasia is not immoral.

Deontology from Greek “deon” or duty identifies behaviours that are intrinsically wrong, apart from their consequences. Thus deontologists regard abortion and euthanasia as examples of unethical behaviour that are intrinsically wrong.

Medical ethics has not reconciled teleology and deontology or settled the controversies within each theory. One attempt to reconcile these theories leads to the practical approach called “Principlism”. Beauchamp and Childress described four principles of modern medical ethics:

1. Beneficence: The moral obligation to act in the best interest of patients.
2. Nonmaleficence: The moral obligation to protect patients from harm and negligence.
3. Autonomy: The recognition that all persons have an unconditional right to determine their own destiny.
4. Justice: The recognition that goods and service should be fairly distributed among all citizens.

Indian ethical thought is embodied in a shlok or verse, from the Bhagavad Gita in which the Lord Krishna explains ethical conduct to a doubting and confused disciple facing his kin in battle.

“You have a right over your actions but do not seek fruits for your labours. Gain should not be on your mind while carrying out your prescribed duty.”^[5]

Ethics and advertising

John Owsley, an American plastic surgeon wrote, “The

only currently acceptable source of advertising for the physicians is their pleased patients.^[6]

The interdigitation of ethical issue with economic one is most clearly seen in aesthetic surgery. The aesthetic surgeon must be particularly careful lest he lose the respect of his colleagues. Consumers may regard aesthetic surgery as a commodity that is bought rather than a service provided by a trained professional, and may recognize aesthetic as business people rather than as physicians. Advertising leads to shopping. Shopping for aesthetic surgery leads to uncollegial competition between specialties and colleagues.

The ethical reason that physicians should not advertise is that medicine is a profession requiring special education and carrying with it special responsibility with standards and tradition of dignity that would be demeaned by something as intemperate as overtly selling services. Furthermore, there is the strong moral duty to tell the truth to the patient. Patients need and expect the truth about their medical conditions in order to consent to or refuse care. The tradition of medicine has been one in which truth telling was often subjugated to other considerations. Only in exceptional circumstances does the law protect a physician who withholds the truth. One is not at risk in being honest with the patient.

Advertising and the law

In 1966, the General Medical Council of Great Britain allowed specialists to advertise their services to the public provided that no undue or dishonest statements were made, and mention was made of the extent of the specialist’s experience. Plastic surgeons can use these methods of ethical reasoning to help them delineate the moral issues that confront them. In 1982, the Second US Court of Appeals ruled that the AMA’s strictures on advertising were illegal and a restraint of trade.^[7]

Personal experience with negligence and the law

Criminal prosecutions of physicians are rare in the U.S. and Europe. Previously in India, if a patient died while under the care of a physician; the physician was automatically charged with criminal negligence without there being any need for evidence. My patient underwent a rhinoplasty with general anesthesia. The anaesthetist who had inserted the endotracheal tube and who was supposed to be monitoring the patient subsequently died and I was the only physician who had been present during the procedure. The Delhi

Police charged me for the accidental death without having any evidence against me. In August 2004, the Supreme Court of India clarified the law and freed the Indian medical profession from the menace of arbitrary criminal prosecution by writing:

“Criminal prosecutions of doctors without adequate medical opinion pointing to their guilt would be doing great disservice to the community at large because if the Courts were to impose criminal liability on hospitals and doctors for everything that goes wrong, the doctors would be more worried about their own safety than giving all best treatment to their patients. This would lead to shaking the mutual confidence between the doctor and patient. Every mishap or misfortune in the hospital or clinic of a doctor is not a gross act of negligence to try him for an offence of culpable negligence....The following concluding observations of the learned authors in their book on medical negligence under the title ‘Errors, Medicine and the Law’ [by Alan Merry and Alexander McCall Smith at pp. 247-248]. The observations are apt on the subject and a useful guide to the Courts in dealing with the doctors guilty of negligence leading to death of their patients:

‘Blame is a powerful weapon. When used appropriately and according to morally defensible criteria, it has an indispensable role in human affairs. Its improper use, however, distorts tolerant and constructive relations between people. Some of life’s misfortunes are accidents for which nobody is morally responsible. Others are wrong for which responsibility is diffuse. Yet others are instances of culpable conduct, and constitute grounds for compensation and at times, for punishment. Distinguishing between these various categories requires careful, morally sensitive and scientifically informed analysis.’^[1]

CONCLUSION

Both ethics and the law define what acceptable behaviour is for physicians. The difference between them is that whereas ethical conduct is binding on the physician by the moral authority of the medical community, adherence to the law is mandatory. Not every incident or situation can be covered by an advisory. New treatments, politics, law, ethics, morals and so forth have their influences, therefore, it is important to understand the accepted moral principles and always respect their spirit. New situations may require new analyses. Medical ethics only becomes useful when it can be fruitfully applied to real life experiences.

I leave you with a thought from William Shakespeare from *The Merchant of Venice*:

“To offend and judge, are distinct offices, and of opposed natures”.

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