

A social insurance medical ethics having patient's welfare and social justice as goals

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Disclosure

- We have no conflict of interest to report

Background – a basic ethical challenge

- Physicians often have dual roles for their patients in European social insurance, both being:
 - Treating physician
 - Expert to National Insurance

Aim

- To study whether or not it is possible to devise a social insurance medical ethics
 - that covers both the roles of a treating physician and
 - an expert to National Insurance
 - in a way that can be defended as a coherent medical ethics.

Methods

- Conceptual analysis linked to ethical theory

Literature on normative ethics for social insurance medicine

- After extensive literature search 1990 - 2016: 13 works
 - In English (4 works)
 - In German (1 work)
 - In Norwegian (6 works)
 - In Swedish (2 works)
 - (All showed on the last slide)

Ethical values in the welfare state and in medicine – a correspondence

- Welfare state
 - A functioning economy – the value of work
 - Satisfaction of basic needs
 - Social justice
 - Freedom/autonomy
 - Human rights
- Standard medical ethics
 - Beneficence/nonmaleficence
 - Justice
 - AutonomyAND human dignity and rights
 - *The UNESCO Universal Declaration on Bioethics and Human Rights*

Components of a social insurance medical ethics

- First: A medical ethics with human dignity and human rights as the overriding ethical principles.
- And:
 - Work ability/disability and functioning (cf. WHO's ICF) – basic medical objects
 - Social collaboration in the perspectives of sympathy/empathy and impartiality.

Normative ethical theories on medical ethics

- Beauchamp's and Childress' "Principles of Biomedical Ethics" (7th ed, 2013)
- The UNESCO Universal Declaration on Bioethics and Human Rights <http://www.unesco.org/new/en/social-and-human-sciences/themes/bioethics/bioethics-and-human-rights/> 2003

Social collaboration in two perspectives

- Sympathy (or empathy)
- Impartiality
 - Michael Tomasello. “The origins of morality” Scientific Am. Sept 2018
 - Impartiality is a criterion of justice.

A morality of collaboration in social insurance medical ethics

- “Empathy and concern for the individual is a prerequisite also for assessments (Begutachtung) in social medicine.
They do not stand in contradiction to the neutrality [impartiality] of the expert” (Elisabeth Nüchtern et al 2015).

1st principle: Human rights: recognition and participation

- All human beings
 - have inherent and equal dignity
 - are actors with reason and moral conscience
 - have various social rights (UN Declaration of Human Rights 1948)
- “Full participation of people with disabilities in all areas of life” (WHO’s ICF: 20).

Human rights in clinical practice

- Respecting the patient's/claimant's identity and life choices.
- Recognizing her/his own perspective.
- Giving the claimant opportunities to participate and decide in
 - follow-up of sick-listed patients/claimants: situations of choice between different future possibilities
 - writing of social insurance certificate: especially when the future abilities to work are described and assessed.
- This does not signify, however, that the physician should agree or that claimants decide the benefits. The rules of law determine.

2nd principle: Do not harm (nonmaleficence)

- Avoid intervening medically in ways that affects a patient's working ability negatively.
 - E.g., to sick-list a patient fully for a longer time without any plan how to return to work.

3rd principle: **Beneficence – to contribute to patient’s/claimant’s welfare**

- In social insurance medical ethics:
 - to help clinically to improve the patient’s/claimant’s workability,
 - to assess if medical conditions for benefits are fulfilled to safeguard the need for economic security.
- Tensions between beneficence and impartiality (justice)
 - The physician as “advocate”

Beneficence in terms of justified paternalism

- The welfare state is built upon a paternalistic way of thinking
 - “People do not always understand what is best for themselves, and they are therefore not able to take care of their interest.”
- A certain amount of paternalism can be ethically accepted because of the amount of welfare and social justice that the paternalism in this context provides.
- In practice, however, the physician should try to obtain shared decision-making with the patient.

4th principle: Autonomy as shared decision making in follow-up of sick-listed patients/claimants

- In follow-up of sick-listed patients, shared decision making means that:
 - The physician should inform the patient about tasks and responsibilities in the process.
 - In a situation of choice, the physician and the patient could discuss for and against the alternatives.
 - The patient/claimant, decides after having discussed with the physician what the legal rules say and what is the best or most important in his/her life.
 - Tensions between autonomy and the paternalism of the Law

Obligations of confidentiality and the duty to inform National Insurance

- There is a conflict between the physician's obligations of keeping confidentiality and the duty to inform the social insurance administration about personal information about the claimants' medical conditions and social contexts.
- Social justice seems to justify the disclosure of necessary medical information to social insurance.
- Tensions between confidentiality (autonomy) and justice.

5th principle: Justice as fairness

- Justice: everybody should be treated fairly.
- Can be difficult, because the person should be assessed not only as an isolated individual, but also as a member and participant in a community.
- Competing interests, needs, rights, burdens, and duties have to be equalized in some way.
- The opposite of justice is arbitrariness (= injustice).

Justice – a complex concept

- Theory of justice requires that:
 - A formal principle of justice and
 - one or more material criteria have to be fulfilled simultaneously.
- *Formal principle*: “Equals must be treated equally, and unequals must be treated unequally” (Aristotle).
 - Impartiality is a criterion of justice in the formal sense.
- *Material principles* – for distributive justice:
 - Need
 - Equality
 - Merit
 - Beauchamp & Childress: Principles of Biomedical Ethics, 7th ed, 2013: 250-253.

Writing certificate: justice in practice I

- The physician should be informed about the purpose or the mandate of the assessment.
- Assessments should be factual and correct.
- There should be recognized professional standards for assessing disease, functions and work disability.
- And for objectivity: What is the status of «objective findings»? Are cognitive criteria of objectivity known and used?

Writing certificate: justice in practice II

- Assessments related to *material* criteria of justice:
 - Do the claimant have special needs that the physician should describe and assess?
 - Can arrangements be made at a working place to improve equal opportunities for the patient/claimant?

Conclusion

- There is a coherent social insurance medical ethics.
- However, unique for social insurance medicine, are:
 - Tensions between: a) beneficence and justice, b) autonomy and paternalism, and c) confidentiality and justice
 - A need to balance empathy and impartiality
 - Work (dis)ability and functioning are primary professional objects.
- Social insurance medical ethics is a species of medical ethics.

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