

Theoretical Essay about Objection Rights and Bioethics in the Medical Practice: Elements of Discussion

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Abstract: Freedom of conscience is one of the fundamental rights of people, because it implies the human freedom and dignity that are above the State. This paper seeks to ponder on the right of objection and the bioethics in medical practice, as well as the way there are other aspects to be considered such as the Universal Declaration of Human Rights, the Official Mexican Regulation 046 (NOM-046-SSA2-2005) and the own right to conscientious objection.

Keywords: Objection rights, Bioethics, Medical practices, Medical beliefs.

INTRODUCTION

Nowadays, medical schools teach students who are in training, the importance of the assistance to their patients, as well as the bioethics principles that must rule their conduct during medical practice. These basic bioethics principles are: beneficence, non-maleficence, autonomy and justice. However, few times they address the subject about how these bioethics principles can benefit the doctor too; an example of this is the right to conscientious objection.

But: what is conscientious objection? Referring the stated by Prieto-Sanchís [1], quoted in [2], it is quoted as “the non-compliance of an obligation of personal nature, whose fulfillment would cause the individual a severe lesion of the own conscience or, if it is preferred, of his/her morality principles” (sic).

To a mayor extend, we can understand that conscientious objection consists on a resistance to a legal regulation because, abiding to such regulation would cause a serious damage to the conscience or moral principles of the individual. It is a confrontation between moral duty, faith, autonomy or justice and the legal duty. The objector does not seek the obstruction of the social compliance to the legal regulation; he/she only wants his/her idiosyncrasy to be respected [3].

Undoubtedly, there will be occasions when the human formation of the doctor is in contrast with the patient request of receiving a prescription, counseling about several methods or practices, to mention some examples. In this situation we will also face a situation worthy of being questioned: what to do when, in medical practice, the doctor cannot or will not carry out a certain procedure? The former may happen because his/her religious beliefs are in contrast with the exercise of his/her profession.

These topics are also worth considering in this theoretical essay, since they can be seen as a moderating variable between the right to conscientious objection and medical practice. Hence, these elements

can lay the foundations to define the causal theoretical model from which this essay will be based on.

Furthermore, when the subject of fundamental human rights is brought up, it is important to consider that numeral 18 of the Universal Declaration of Human Rights (1948)¹ states that:

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance” (sic).

Until now and considering the above mentioned, it is possible to visualize how complex medical practice is, especially because this complexity is associated with variables that are part of the

¹ Information that can be consulted in the United Nations website <http://www.un.org/en/index.html> and in the specific case of the Universal Declaration of Human Rights on the link: http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf [Consulted on November 25, 2014]

discussed phenomenon, which up to this point are: right to conscientious objection, medical practice or also known as professional exercise of medicine, fundamental human rights and doctor's beliefs.

However, what has being the stance of the institutions that regulate medical practice? As an important fact, there is the argument presented by the World Health Organization (WHO) (2012)², about an issue that has being subject of political and religious debate and has also being present in academic and scientific speech, which is abortion and regarding this matter the WHO mentions that:

"Health-care professionals sometimes exempt themselves from abortion care on the basis of conscientious objection to the procedure, while not referring the woman to an abortion provider. Individual health-care providers have a right to conscientious objection to providing abortion, but that right does not entitle them to impede or deny access to lawful abortion services because it delays care for women, putting their health and life at risk".

While international human rights laws protect freedom of thought, conscience and religion, they also establish that the freedom to manifest one's religion and beliefs can be subjected to limitations necessary to protect the fundamental human rights of other people. On this topic, García-Herrera [4] mentions that between moral duties or justice and legal right a lesion to the conscience can be caused in the person, referring to the moral principles of an individual. Therefore, this situation may lead the person to choose moral duty above public or legal obligation.

Consequently, in health service matters, laws and regulations should not empower the providers and institutions to prevent the access to legal health services and in this specific case, the access of health service to women [2].

Regarding abortion, it is a recurring subject that involves fundamental human rights and the doctor's religious beliefs in medical practice, so it is possible to point out that health care professionals who adduce conscientious objection should refer the woman to a willing and trained provider in the same or another easily accessible health care facility, according to the applicable national law in the context of this particular case.

Where referral is not possible, the health care professional who objects must provide an abortion to save the woman's life and prevent injuries to her health. Health care services should be organized in such a way

that they guarantee the effective exercise of the freedom of conscience of health care professionals in a context that does not prevent patients from accessing the services which are rightfully theirs according to the applicable legislation.

In this initial approach to the subject, some significant variables are identified within this theoretical reflection and these are: the regulations governing medical practice and on the other hand, the fundamental principles of a person.

If these variables are visualized in an interaction among themselves, it is important to include the subject as the moderating variable between them and so, the doctor becomes the variable that allows the making of a model under which the discussion of this theoretical reflection presented in this essay will take place.

Once these topics of the essay have been mentioned, some questions arise about: which are the conditioners of the doctor that could modify or support his/her medical practice? Also, how much is taught to the doctor in training?. Bioethical rights also protect the beliefs of the doctor in his/her medical practice?, international laws, treaties and health care regulation respect the religious beliefs, autonomy and personal judgement of the doctor to object?, conscientious objection of the doctor interferes with patient autonomy?

Through the arguments presented previously we can define a scheme from which to analyze the object of study. Figure 1 describes the elements that are related to each other in order to understand bioethics in medical practice, which is the subject of this theoretical reflection.

² To enrich this matter, we suggest consulting the several publications from the WHO about this subject from website: <http://www.who.int/about/en/>

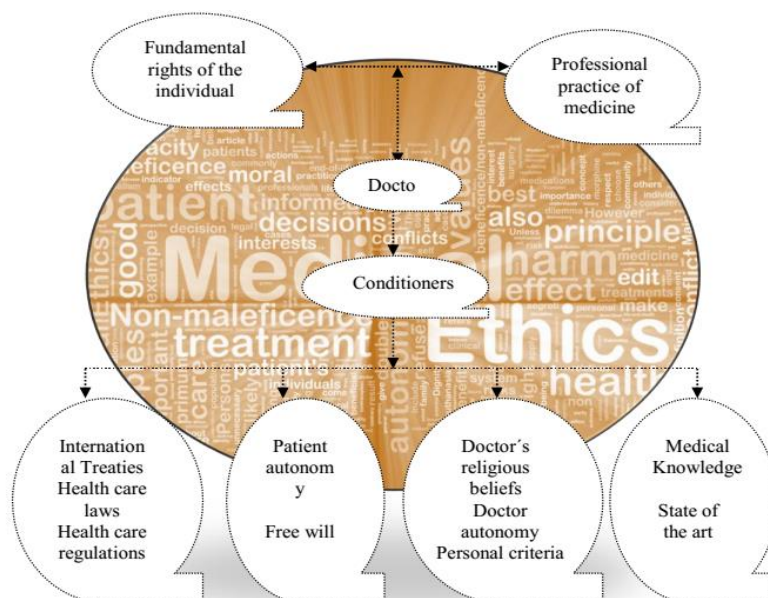


Fig-1: Route of the model

Source: own

Nowadays, talking about the right to conscientious objection and bioethics in medical practice entails a series of elements which must be analyzed with the outmost care, meaning that medical practice is one of the oldest disciplines of human beings throughout time and it is clearly regulated with insistence by the authorities that govern this branch of knowledge.

Legal and theoretical foundations

After the variables were described in Figure 1, we proceed to the analysis of some arguments that will allow the understanding of this subject, this in order to make the final reflections in this essay. In the model of study the following variables are identified: fundamental rights of the person and what we have named professional exercise of medicine, both moderated by the professional who practices this discipline, which is the Doctor, who has special importance in the present essay because within this human being there are several conditioners that may modify his practice or the exercise of medicine, an example of that would be his/her religious beliefs, ethical code or bioethics and certainly, the fundamental aspects of medical practice.

Universal Declaration of Human Rights

The universal declaration of human rights protects the freedom and equality of all people. The legal foundations described in articles 10, 18, 19, 28, 29 and 30 discuss the rights of individuals related to the equality that must exist between them and the right to be publically heard in the corresponding tribunals. Also, the declaration mentions freedom of thought, religion, teaching and issuing your own opinion, as well as the right of expression, which includes the fact that people

must not be bothered due to their opinions and the right to investigate and receive information and opinions that can be broadcasted, without limitation of borders, by any means of expression.

These articles also point out the obligations everyone has regarding his/her community, since only inside it, one can develop freely and fully his/her personality. Every person will be only subjected to the limitations stated by law with the only purpose of securing the knowledge and respect of the rights and freedom of others. These rights and freedoms cannot be –in any case- be exercised in opposition to the purposes and principles of the United Nations.

In the Political Constitution of the United States of Mexico (CPEUM for its acronym in Spanish) there is not an explicit precept to safe keep the right of conscientious objection but in its 24th article, religious freedom is guaranteed, which covers the right of conscientious objection; the former because Mexico is a country that strives to make its laws compatible with universal treaties about human rights and this also encompasses rights such as freedom of religion, conscience and thought in one because all of them share the same principle.

It is appropriate to point out that regarding conscientious objection can be conceived from two points of view: first, “negatively”, as protection in the face of cohesion, regarding the actions of choosing one’s own religion or worldview in the case of atheists.

Freedom of conscience allows the adjustment of personal behavior to our own moral conscience, even when this contravenes a legal disposition or ruling from

a legitimate authority. Considering the negative dimension, the Mexican state guarantees the flowing rights in favor of the individual, stating that:

You can have or adopt the religious belief of your best liking and individually or collectively practice the worship acts and rites of your preference. You are able to not profess any religious belief and can abstain from practicing worship acts and belong to any religious association. You have the right to not be the object of discrimination, coercion or hostility caused by your religious beliefs and to not be forced to declare yourself on said beliefs.

Regarding the positive dimension of freedom of conscience, the law does not guarantee the right to adjust personal behavior to moral conscience in the cases where there is a legal disposition that, even when in itself does not directly contravene religious freedom, poses a conflict of conscience for certain people, forcing them (under penalty, sanction or privation of benefit) to act contrary to their conscience or forbidding them to act as dictated by their conscience, which is the right to conscientious objection.

The official Mexican regulation 046 (NOM-046-SSA2-2005)

In the matter of right to conscientious objection related to family and sexual violence, as well as crimes against women, section 6.4.2.7 of NOM states that, in case of a pregnancy caused by rape, within the terms of the applicable legislation and previous authorization of competent authorities, public health care institutions must provide the service of medical abortion requested by the interested victim; when she is under-age the request must come from the father and/or mother, and in the lack of those, a tutor or the person appointed by legal authorities applicable to the case.

In all the situations, before the medical intervention, victims must be provided complete information about the possible risks and consequences of abortion, in order to guarantee that the victim's decision is informed according to the applicable dispositions. The right to conscientious objection of the medical and nursery personnel in charge of the procedure must be respected. The federal public health care institutions should be subjected to applicable federal dispositions.

However, even though it is true that medical practice has been regulated by these organizations, a question arises and can be stated as follows: what about the rights of the patient? In the face of this question, it is clear that an individual is part of a society ruled by laws, regulations and other legal aspects that must be observable within a group.

It is relevant to mention that the fundamental rights of every living being are present in the

Constitution (CPEUM), which in the case of Mexico, states on the articles 1, 2 and 4 that people will enjoy the human rights acknowledged in the Constitution and in the international treaties where the Mexican State is a part of, as well as the guarantees for the protection of said rights, which cannot be restricted or suspended, except in the cases and conditions established in the Constitution.

The regulations related to human rights will be interpreted according to the Constitution and the international treaties on the matter, promoting at all times the widest protection for people. Every authority –in the range of its competence- has the obligation of promoting, respecting, protecting and guaranteeing human rights in accordance with the principles of universality, interdependence, indivisibility and progressiveness. As a consequence, the State must prevent, investigate, sanction and repair the violation of human rights in the terms stated by law.

Article I

Slavery is forbidden in the United States of Mexico. Foreign slaves who enter national territory will acquire, by that simple fact, their freedom and protection of the law. All sorts of discrimination are forbidden, whether it is caused by ethnicity, nationality, gender, age, disabilities, social condition, health condition, religion, opinion, sexual preference, marital status or any other that attacks human dignity and aims to nullify or weaken human rights and freedom.

Article II

Determines the necessary policies to assure the validity of rights for indigenous people and the development of their towns and communities; those policies must be designed and operated jointly with them.

Section III. Ensure the effective access to health services by means of an extension in the coverage of the national system, taking advantage of traditional medicine, as well as supporting the nutrition of indigenous people using feeding programs, especially in the case of children.

Section V. Promote the development of indigenous women with the support of productive projects, health protection, grant of incentives to promote their education and participation in the decision making related to community life.

Section VIII. Establish social policies to protect the migrants from indigenous people, both in national and foreign territories, by taking actions to guarantee the labor rights of agricultural laborers; improve the health conditions for women; provide support with especial programs for the education and nutrition of children and youth from migrant families;

safe keep their human rights and promote the diffusion of their cultures.

Article IV

Men and women are equal in the eyes of the law, which will protect the organization and development of the family. Every person has the right to decide the number and timing of their children in a free, responsible and informed manner. Every person has the right to nutritive, sufficient and quality nourishment. Every person has the right to health care. The law will define the bases and modalities for the access to health care.

Every person has the right to a healthy environment for his/her development and wellbeing. The State will guarantee the respect to this right. The environmental damage and deterioration will be accountable to whoever causes it in the terms stipulated by law.

Right to conscientious objection

Conscientious objection is the right to not being forced to do something that comprises the deepest ethical or religious convictions a person [7]. As stated by the National Bioethics Commission in Italy (2012), conscientious objection is understood as a general attitude of intentional dissent towards authority, which is expressed in the refusal to obey a legal order that poses a conflict with the obligations derived from moral convictions.

For Falcón and Tella [5], conscientious objection is the expression of the fundamental right to freedom of conscience, which “is subjected to ethical and conscience reasons that, at the same time, may be of different religious, humanitarian, moral or philosophical nature, among others. It is the result of a conflict between law and moral, between legal and moral duty, in which moral surpasses law” [6].

In this regard, it is important to consider that conscientious objection cannot be limited to an arbitrary refusal to obey, but with the exception of individual reasons in bioethics, conscientious objection can be seen as an inalienable human right recognized in Mexico by the CPEUM (Spanish acronym for Political Constitution of the United States of Mexico). In fact, the respect to freedom of conscience has been considered one of the most fundamental rights since it presupposes that freedom and human dignity are above the State [2].

The individual’s conscience is not limited to the medical practice; it is related to the individual as a person and not only as a professional. The right to conscientious objection is first and foremost, a right of the person that even the State must legally [8].

Recent literature distinguishes between “traditional” conscientious objection and another that is called “new conscientious objection”. In the traditional one, the rights of third parties are not at stake, while the new conscientious objection refers to the refusal to provide several health services when this refusal affects the rights of others [7]. In these cases, conscientious objection becomes a legal liability when the refusal to provide a health service risks the life, health and/or autonomy of people.

Thus, the possible violation or compromising of rights implied in conscientious objection is aggravated by several causes: firstly, because there is a double source of discrimination, since the main group affected by these practices is women and the second source of discrimination is because they are poor women. Unfortunately, there isn’t a guarantee of easy access and without obstacles to these practices objected by doctors and pharmacists. For that reason, by guaranteeing the right of patients, doctors can focus on the moral and legitimate claim of the professionals who object these practices.

Objection implies that, in many cases, there is an absence of the service, so the idea of accommodating the objector has come after the people’s access to rights that are recognized by law, the Constitution and treaties, because these rights cannot be compromised in order to guarantee objection [7].

CONCLUSION

As final reflection, we can say that human rights are applicable to every person regardless of gender, race or religious belief, as well as the right of objection to everyone who practice medicine, giving them complete freedom of choosing the procedures, without leaving away the basic principles of bioethics: beneficence, non-maleficence, justice and autonomy.

Nonetheless, in Mexican culture it is uncommon to see that population considers the doctor as any other citizen with a right to be protected by the same principles that apply to other human beings. Apparently, it is expected from the doctor to comply with all the patients’ requests and to carry out all the procedures that are imposed.

Surely this subject is in permanent debate since it is such a controversial matter in our society that can be seen from several perspectives: one of them is that the doctor is a human being with the same rights as any other person, who besides the ethical and conduct code of the medical field, it should also be a matter of debate in regard to the internal “self” of the doctor, his/her beliefs and convictions.

In this way, this subject remains on the table of academic enquiry, in order to keep exploring the current role of the doctor in daily medical practice and how

his/her behavior should be in any medical situation that presents during the exercise of his/her professional and human duty, as well as in the art of healing, caring and accompanying the patient, where the elements discussed in this essay can be integrated.

As recommendation for future research

To carry out a study about the education received by medicine students in their school institutions; the environment in which doctors unfold in their training process during their internship in public and private institutions and the year of social service in rural and public institutions, as well as their family environment in which they have grown and their religious beliefs.

Also, other studies can be conducted that could reveal the attitude taken by a doctor in the face of the drastic change during their social service stage, meaning, when they are in charge of a health center while making their social service in rural communities and the study on the psychological process they go through in the course of all the years of professional training would be important as well.

Furthermore, a study can be made regarding psychological pressure, abuse of power and sexual harassment suffered by students in their training during the course of their professional career; likewise, about the treatment received in the medical field by females in contrast to their male counterparts.

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