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Liability and Medical Malpractice in General Medicine

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Abstract

The question of the exchange of information between doctor and patient arises regularly. The evolution of the regulations which frame medical practice in favor of the patient's right to obtain information in medical matters requires the medical profession to be concerned about the burden of ethical, legal, and moral responsibility. This study aims to evaluate and analyze the information of general practitioners in Morocco about the notion of secrecy and medical malpractice.

Keywords: Medical liability; Medical confidentiality; Right to information; Medical malpractice

Introduction

The patient's right of access to information on his health is apprehended in such a broad way that it has become one of the most dreaded obligations of doctors [1]. The obligation to inform the patient is resented by some doctors because of its heaviness, especially in the event of medical malpractice.

The new medical liability reforms lean towards an unusual direction that reflects the discontent of civil society and therefore the legislator must ensure the degree of ethical and moral respect of the doctor-patient relationship [2]. This relationship is endowed with a particular character on the one hand scientific-individual and on the other hand collective-sociocultural. The doctor must consider the asymmetry in this relationship and with empathy while respecting the affective reactions resulting from transference and counter-transference. A phenomenon of reciprocal transcendence will take place at this time, the doctor idealizes the patient as one who complies with the care and the patient idealizes the doctor as healer and expert.

The purpose of this work is to take stock of the degree of awareness and knowledge of general practitioners in terms of medical liability and to highlight legal developments and recommendations in the field of medical law.

Material and Method

This is a descriptive cross-sectional study, conducted between January and June 2020. The collection tool was an anonymous, self-administered questionnaire, composed of 23 closed questions, encompassing two main types of variables: demographic and variables dealing with the attitude and knowledge of general practitioners in terms of medical malpractice, medical secrecy, medical information and medical prescription. The data collected was entered into a computer and analyzed using SPSS version 20 software.

Results

Our study involved 350 general practitioners, 200 (57%) of whom answered the questionnaire. Among the doctors questioned, 69.5% were over 41 years old and 30.5% between 31 to 40 years old with an average duration of exercise of 15.5 years. Sixty percent of participants worked in the public sector (Table 1). During the consultation, 89.5% of the doctors explained the therapeutic modalities and their alternatives to the patients and 85.5% took into account current scientific data. The readability and the writing quality of the prescription were good in 53.3% of the doctors. 38.5% of doctors have already prescribed a drug outside the MA (Marketing Authorization) and 71.5% thought that this attitude could engage the medical responsibility of the doctor.

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Table 1: Sociodemographic characteristics.

Variable	n	%
Age		
18-25	0	0
26-30	5	2.5
31-40	56	28
41-50	82	41
51-60	57	28.5
>60	0	0
Gender		
M	87	43.5
F	113	56.5
Family status		
Married	174	87
Single	26	13
Exercise duration	Moy: 15.5 ans	
Sector		
Public	120	60
Private	80	40

The disclosure of medical secrecy is mandatory in the event of a death certificate for 36% of participants, in the event of a birth certificate for 36%, and in the event of a criminal abortion for 46.5%. However, 51.5% of the doctors who took part in this survey think that the computerization of the patient's file does not influence the disclosure of medical secrecy.

66.5% of the doctors thought that the non-assistance to a person in danger engages their criminal responsibilities except in the presence of a risk for the assistant and 92.5% mentioned the refusal of the care of the patient in the medical file. None of the participants judged their knowledge of medical law to be as good as very good and all the doctors considered it very important to introduce more in-depth courses on ethics and responsibility into the continuing medical education program.

Regarding the disclosure of medical malpractice, the majority of participants thought that the disclosure of medical malpractice is one of the patient's rights of access to information (74.5%), that it contributes to the improvement of the quality of care (74%), that it increases the patient's confidence in their doctor (61%) and 87.5% of doctors responded favorably to the statement "I like to be treated the same way if I were a patient". Less than half of participants believe that disclosing medical malpractice reduces both the risk of legal action against the doctor (46%) and the risk of the patient changing doctors (38.5%).

In our study, 69.5% of doctors said they were afraid of legal action by the patient against them, 82% of them feared an aggressive emotional reaction from the patient's family members. However, 46.5% are afraid of losing their professional reputation.

In addition, the majority of participants believe that legal action in the event of a medical error is not justified because the error is not due to culpable negligence (92%) but results from a careful act of the Doctor and not irresponsible (85.5%) and that penalization neither improves the quality of care nor is in the interest of our patients (79.5%).

The vast majority of doctors judged their level of knowledge of medical law as average to poor (90%) and all of the participants mentioned the need to introduce more in-depth courses on ethics and medical law (Table 2, 3).

Discussion

This work aimed to take stock of the degree of awareness and knowledge of general practitioners in terms of medical liability. Several arguments in favor of the disclosure of medical malpractice but also the obstacles that prevent this disclosure were put forward by our participants. Indeed, information is at the heart of the very specific relationship between patient and doctor. Jurisprudence sometimes considers that information on the risks of the operation weighs both on the general practitioner recommending the consultation of the specialist and on the specialist doctor who performs the specific act [1].

The doctor as a whole is a citizen capable of carrying out a particular and risky professional activity in a well-organized framework. As a practitioner, he must meet the requirements of his profession in front of his peers and his patients, and he can be sanctioned by the courts of common law (civil and criminal) or professional. Nevertheless, the practitioner was long besieged with a particular quasi-religious veneration. Within certain polytheistic civilizations, besides the God of the sun, of the sea, there was even the God of medicine. This noble profession was often considered priesthood [3]. From Babylonian antiquity, several documents have been related in matters of medical responsibility in the code of Hammurabi. This code dealt with several penalties for incompetent and clumsy doctors. Notwithstanding, the doctor's responsibility never made the indictment. The arrival of the famous Mercier judgment in May 20th, 1936 upset the general overview of the doctor-patient relationship, and the appearance of a new notion that of the contractual nature of the doctor-patient relationship. A synallagmatic-type contract which implies reciprocal and well-defined obligations for the two actors in this relationship in the code of ethics [4].

Medical secrecy, information and fault are pillars of medical ethics. Like any professional secret, medical secrecy is the conductor of the doctor-patient relationship, as Professor Hoerni said "There is no care without confidence, confidence without confidence, confidence without secrecy" [5]. The seemingly cardinal notion of trust has undergone a metamorphosis from a trust based on the spiritual, religious and emotional to a rational trust based on science. However, medical secrecy does not concern only the doctor, but all the actors of the health establishments (administrative staff, paramedical staff, cleaning services, patient associations). However, a particular reserve with regard to medical secrecy was revealed by our study in the event of a death certificate, birth certificate or in the event of a criminal abortion. The computerization of the medical file has long been a weak point of protection for medical secrecy, the digital archiving of data is often complicated, hence the interest of high vigilance so that the secrecy of the medical file is respected [6,7]. Our survey showed a tendency among doctors to consider the computerization of the patient's file as not influencing the disclosure of medical secrecy.

Although the doctor is bound by an obligation of means and not of result *vis-à-vis* his patient, he is required to warn the patient of the risks of the medical act but also of medical malpractice. From the moment when the medical act, whether a prescription for drugs or a surgical act and even not at fault, has caused sequelae of a "certain

Table 2: Arguments and barriers to medical malpractice disclosure.

Items	Yes (%)	No (%)	I don't know (%)
During the consultations, do you explain the possible therapeutic modalities with your patients?	89.5	10.5	-
During your clinical practices, do you take current scientific data into account?	85.5	14.5	-
Have you ever prescribed an off-label medication that you consider effective?	38.5	43.5	8
Do you think that the prescription of authorized drugs is in the interest of the patient?	77	20.5	2.5
Does off-label prescription engage the doctor's responsibility?	71.5	5	23.5
Your arguments in favor of medical malpractice disclosure:			
• It is the patient's right of access to information	74.5	20.5	5
• Increases patient confidence in their doctor	61	33	6
• Reduces the risk of legal action against the doctor	46	38.5	15.5
• Participates in improving the quality of care	74	18	8
• Decreases the risk of the patient changing doctors	38.5	31	30.5
• I like to be treated the same way if I was a patient	87.5	8	4.5
Your barriers to medical malpractice disclosure:			
• Fear of losing professional fame	46.5	33	20.5
• Fear of legal action by the patient against the doctor	69,5	20.5	10
• Fear of the emotional reaction of the patient's family members	82	-	-
Do you think that the doctor should not be prosecuted in the event of medical error because:			
• The error resulting from an attentive act of the Doctor and not irresponsible	85.5	4	10.5
• The error is not due to culpable negligence	92	5.5	2.5
• The chance and the therapeutic error do not engage the responsibility of the Doctor	54	28.5	17.5
• Penalization does not improve the quality of care or benefit our patients	79.5	2	18.5
The doctor is under an obligation to disclose the secret in the event of:			
• Death certificate	36	41	23
• Birth certificate	36	41	23
• Criminal abortion	46.5	18	35.5
Do you think that the computerization of medical records contributes to the disclosure of medical secrecy?	41	51.5	7.5
Failure to assist a patient in danger engages the criminal liability of the doctor unless:			
• His assistance has a risk for the practitioner or for a third party	66.5	17.5	16
• The danger to the patient requires the intervention of another medical discipline	67	31	2
• If the doctor's abstention was involuntary	69	15	16
The refusal of a patient to be treated in an emergency situation:			
• In case of refusal, you mention it on the medical file	92.5	5.5	2
• Do you think that the doctor should bow to the will of the patient	44	41	5
• Forcing the patient is considered life-saving violence	36	31	33
Do you consider it necessary to introduce more in-depth courses on medical ethics and responsibility into the medical training program?	100	-	-

seriousness", it could call into question the responsibility of the doctor. In general, for a physician to be held liable, the patient must prove the existence of a fault, of harm caused to the patient and of a causal link between the fault and the harm [8]. This risk of legal proceedings, which calls into question the administrative, civil and penal responsibility of the doctor, encourages some of the practitioners to escape the claim and the disclosure of medical malpractice.

The duty to inform is an ancient foundation, brilliantly explained in the code of medical ethics. Faced with legislation that requires the obligation of information, the doctor must prove that he has given transparent, fair and appropriate information, while the patient is under the obligation to corroborate the causal link between the damage and medical malpractice [9]. Despite well-structured information and informed consent, the attending physician must always have recourse to current scientific data to carry out clinical and paraclinical diagnosis, treatment and follow-up. For example, the Court of Cassation answered that cystoprostatectomy with replacement performed by a urological surgeon cannot be considered

Table 3: Medical prescription and liability, medical secrecy and disclosure of medical malpractice.

	Very Good	Good	Medium	Bad	Very Bad
How do you judge the degree of readability of your prescription?	12.5	53.5	28	6	0
Are you satisfied with the degree of respect for medical secrecy in your establishment?	7.5	28	49	13	2.5
How would you rate your knowledge of medical liability?	0	8	54	36	2
	Totally agree	**Agree**	**Neither disagree nor agree**	**Disagree**	**Not agree at al**
Disclosure of medical malpractice depends on the physician's judgment whether the information is beneficial or harmful to the patient.	41	20.5	28	8	2.5

as a preventive therapy in view of the disabling consequences it entails [10]. After the promulgation of several laws which govern the doctor-patient relationship in several countries, the doctor is always under the obligation to clearly and honestly inform the patient of the diagnosis, the investigations or preliminary measures, any treatment adapted to the pathology and the follow-up of this treatment, while respecting medical secrecy. Any violation, even involuntary, of this obligation incurs medical liability.

In our work, several doctors have found the off-label prescription of a drug to be effective and that off-label prescription engages the doctor's legal responsibility. Indeed, the medical prescription represents the end product of an orderly process resulting from a cascade of scientific thought constituting one of the pillars of the medical profession, and the guarantee of its scientific emancipation. The validation and Marketing Authorization (MA) of all drugs must go through rigorous scientific studies [11,12]. The doctor must therefore justify any off-label prescription by indicating that the treatment has proven efficacy by the medical community, does not represent any risk to the patient's health and that its indication is essential in view of the patient's condition and the knowledge current scientists. In addition, when the practitioner is confronted with a case where the prescription within the framework of the MA is not possible, the prescriber must inform his patient of the risks and benefits expected from this treatment as well as the conditions for taking it into account covered by health insurance [13].

The low level of knowledge of medical law underlines the need to introduce more in-depth courses on ethics and medical law into the medical training program. Indeed, a Dutch study linked physicians' inappropriate attitude towards new medical ethics laws to their levels of knowledge about medical legislation [14]. Another American study found that explicit training in risk management, appropriate medical records, and medical communication among treating physicians decreases the risk of malpractice [15].

Conclusion

The current dissociation between the rights of the patient and the duties of the doctor reproduces a growing instability in the medical field. As a result, it is mandatory to be well informed and to use informed consent for all medical interventions on the human body [16]. However, the existence of a causal link between the damage suffered by the patient and the doctor's fault is a sine qua non for the doctor to be held liable.

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