

**CUHK CENTRE FOR
BIOETHICS**

Clinical Ethics
Workshop Series

The Doctor – Patient Relationship

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Our Topic Today

**Conflicts of Interest that
Muddle the Doctor-Patient
Relationship – Ethical & Legal
Considerations**

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Importance of D-P Relationship

- The Doctor-Patient relationship lies at the heart of medicine. It is related to the issue of consent, trust, and is often subject to assessment as to whether the doctor has discharged his medical obligations professionally.
- In other disciplines, the relationship is described as a “fiduciary” one, which acknowledges the imbalance of knowledge and power between the fiduciary (the doctor) and the beneficiary (the patient).

Conflicts of Duty in context (1)

- A doctor has a duty to treat a patient's medical condition to improve that patient's health.
- The medical decisions should be made on the basis of the doctor's professional knowledge with the patient's best interest in mind.
- A conflict of interest arises when a doctor recommends or gives the patient tests or treatments for some other reason unrelated to the patient's interest.
- In many cases, but not always, this other reason for giving treatment involves direct or indirect financial gain by the doctor. Sometimes conflict with a third party can also impact the doctor-relationship.

Conflicts of Duty in context (2)

- Its relationship to the concept of Consent
 - Informed Consent requires:
 - Sufficient information about the medical procedure
 - Patient understanding the benefits and risks of the procedure
 - Options available
 - ***What about other relevant factors?***

Conflicts of Duty in context (3)

- Its relationship to Medical Malpractice?
 - Medical malpractice happens when the doctor fails to meet the standard professional conduct in terms of treatment and is found negligent.
 - A conflict of interest can lead to malpractice, but malpractice doesn't always include a conflict of interest.
- Its relationship to Misconduct ?

Conflicts of Duty in context (4)

- What are a Doctor's Duties Regarding Conflicts of Interest?
 - A doctor has a duty to inform his patient of any conflict of interest. Is the conflict of interest a “material fact” ? If it is, the patient has a right to know. Only when fully informed of material facts can a patient's decision to accept or decline medical treatment be voluntary.
 - The most difficult thing about proving conflict of interest is that the patient may be unaware that there was a conflict of interest. Is disclosure to the patient required, or mere disclosure to the employer of the doctor sufficient?

Conflicts of Duty in context (5)

- When the professional responsibilities of individuals or organizations are, or have the potential to be, compromised by other, external obligations, a conflicts situation may arise. Usually, they come in the form of Financial Interest or Conflicting Goals.
- Professional Codes strictly govern this area through specific prohibitions.
- The protection of the fiduciary responsibilities of the doctor to the patient underlies these prohibitions.

Fiduciary Relationship

- This originates from Trust Law in the common law tradition. The law imposes obligations on a fiduciary in these respects:
 - Duty to act in Good Faith
 - Duty to exercise the Power for a proper purpose
 - No Conflict of Duty (No secret profits)
 - Duty to act with Care and Diligence
- If there is a breach, any gain obtained by the fiduciary may be claimed by the beneficiary.

Code of Professional Conduct for the Guidance of RMPs

- “The term “misconduct in a professional respect” is not defined in the Medical Registration Ordinance but has been interpreted by the Court of Appeal as conduct falling short of the standards expected among registered medical practitioners. (Page 10).
- D. FINANCIAL ARRANGEMENTS

The Medical Council of Hong Kong may conduct disciplinary enquiries under the Medical Registration Ordinance, Cap.161.

Challenges and Solutions (1)

- Prohibitions of conflicts in some sensitive areas ?
- Full disclosure to patients -
 - Through the organizations, e.g. hospitals ?
 - Through the individual doctors to patients ?
- Helpful to have agreements made by doctors with funding organizations that state
 - “No quid pro quo is expected or promised” ?
 - If there is a conflict, I will terminate the D-P relationship? (refer to page 13 of Code)
- Challenges: e.g. long queues (public sector), economic incentives (private sector)

Challenges and Solutions (2)

- Doctors' empathy with patients makes all the difference.
- Empathy of the Health System is also important. How could the system reflect D-P empathy and reward / promote good and ethical behaviour?
- Suggestions ?



THANK YOU