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Trust and its meaning within the patient-doctor relationship in chosen codes of medical ethics

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Abstract In all the codes of ethics discussed here, the relationship of mutual trust is of great importance. If it arises, then it should certainly be actively cared for by the doctor. However, if it is absent, the doctor faces a dilemma: should contact with the patient be maintained at any cost? As I have shown, codes of ethics handle this situation, in which the relationship of mutual trust is somehow impaired, in various ways. The proposed answer to this question can therefore also vary.

This is due to the fact that ethics is a set of rules operating "from within", which makes it different from the law. It would be absurd to claim that the standards of the Czech code of medical ethics apply solely to Czechs, while those of the Codex Deontologicus solely to Italians. One is a doctor not only always, but also everywhere.

In the end, it is doctors who decide, according to their conscience, if their actions (in this case discontinuing treatment due to lack of mutual trust) are right or not. The criterion for rightness here is the best interest of the patient. However, the decision to discontinue treatment should be of a procedural nature. Only when a doctor has decided that all attempts to restore this relationship have failed, and when a more or less objective justification for cutting ties with the patient can be found, should the patient be handed over to another doctor.

Key words: patient-doctor; medical ethics

Introduction

It is difficult to precisely define the term *trust.* After all. it is present both in daily life (at the level of interpersonal relationships), as well as in the domains of medicine, law, economics, politics etc. The popular understanding of this notion corresponds to the definition contained in the PWN *Słownik Języka Polskiego* dictionary, where "trust" is defined as the conviction that someone's words, information etc. are true and the conviction that someone has specific skills and can use them adequately[1]

However, within the context of medical care, this definition appears insufficient. The concept of trust between doctor and patient is somehow deeper. On the side of the patient, apart from the conviction noted above, this notion also contains a sort of abandon, entrusting one's health to another person. While on the side of the doctor, it establishes a partnership. This profounder meaning of trust results from the specific nature of the doctor-patient relationship. It is not uncommon for patients to have to share the most intimate details of their lives and to allow doctors to perform acts which can be unpleasant or embarrassing. Often, this relationship is a long-term one and as a result, the doctor can obtain knowledge not only of the patient's health, but also of their social or family situation, etc. The process of successful healing would therefore be difficult, if not impossible in some cases, if this relationship were not based on trust.

Taking into account the importance of mutual trust in the therapeutic process, it should come as no surprise that this concept is closely linked to the ethics of the medical profession. In the *Medical Ethics Manual*, published by the World Medical Association (WMA), we can read:

> People come to physicians for help with their most pressing needs – relief from pain and suffering and restoration of health and well-being. They allow physicians to see, touch and manipulate every part of their bodies, even the most intimate. They do this because they trust their physicians to act in their best interests.[2]

Trust is therefore defined here as the condition for a proper relationship between a doctor and a patient during the course of treatment. It would seem this can be reformulated thus: patients trust doctors in order to allow them to effectively carry out the therapeutic process. The goal of the doctor should then be to display empathy and commitment, in a manner which inspires the patient to have confidence in the doctor's course of action, this in the patient's

[1] Entry: *Zaufanie* [in:] Słownik Języka Polskiego PWN, https://sjp.pwn.pl/sjp/zaufanie;2544487.html. Accessed: 23.10.2018.
[2] Williams John R., *Medical Ethics Manual*, 3rd Edition, https://www.wma.net/wp-content/uploads/2016/11/Ethics_manual_3rd_Nov2015_en_1x1.pdf, p.15. Accessed: 17.10.2018.

own best interest. It is only then that the relationship mentioned above can bring mutual benefits as part of the therapeutic process.

This article attempts to answer the question of how *trust* is defined in various codes of medical ethics (understood here above all as trust on the micro, or interpersonal level, directly between the doctor and patient, abstracting from the relationship between the patient and the health service as an institution[3]). Since it is necessary to select a few chosen codes, the problem defined in the title will be examined on the basis of the codes of medical ethics which apply in the Czech Republic, Italy, Germany and Poland. The meaning of trust will be presented here both from the point of view of the doctor (e.g. as the right to discontinue treatment when there is a lack of trust) and the patient (the right to choose a doctor).

Trust **as an ethical value**

When we take into account the benefits resulting from the relationship, it is not hard to see trust as an ethical value. It is something which is desirable, something which both patient and doctor strive towards as part of the therapeutic process. However, defining this ethical value in relation to others, creating a sort of hierarchy, is far from unambiguous. Some ethical manuals for doctors claim that the *medical profession considers mutual trust as the basis for the doctor-patient relationship, which is strongly emphasised in the code of deontology*[4]. For some doctors, this trust within the relationship is a necessary condition for effective treatment, and when this relationship does not flourish, this is seen as sufficient cause to discontinue treatment. On the other hand, mutual trust can be understood only as a contributing factor to effective treatment, not a required condition, and so even in the absence of this relationship between patient and doctor, the treatment must be continued (though obviously in a more complicated manner).

In the Czech Republic, both manners of attributing value to trust co-exist, which leads to a certain contradiction between what is in accordance with the law, and that which is moral. The code of ethics of the Czech Medical Chamber (*Etický kodex České Lékařské Komory*) allows to discontinue treatment at the point where there is a lack of trust between doctor and patient, while Czech law sees such a cause for discontinuing treatment as insufficient.

In point 2 paragraph 4 of the Czech Medical Chamber's code of ethics, which concerns working as a doctor, we read:

[3] See Krot Katarzyna, Rudawska Iga, *Koncepcja zaufania w relacji lekarz-pacjent w świetle badań jakościowych,* [in:] *Polityki Europejskie, Finanse i Marketing. Zeszyty Naukowe SGGW w Warszawie,* No. 10 (59), Warsaw 2013. p. 382.

[4] See Tröhler Urlich, Reiter-Theil Stella, Ethik *und Medizin, 1947-1997: was leistet die Kodifizierung von Ethik?,* Wallstein Verlag, Göttingen, 1997. p. 427.

> (4) A doctor has the right to refuse treating a patient for reasons of insufficient qualification, or being overworked, or being convinced that the required mutual trust between doctor and patient has not been established. However, the doctor should advise on (or in the case of consent – provide) the proper course for continued treatment[5].

Here, the lack of mutual trust is treated on the same level as a lack of sufficient qualifications, or the inability to perform the job due to fatigue. It is therefore seen as an exceptional situation, in which the doctor has the *moral* right to discontinue treating a patient. The point of view of Czech law, as previously mentioned, is the following: a doctor may not abandon treatment, even in the situation where there is this lack of trust with the patient[6].

The reason the provision above was not added to the *Zákon o ochraně veřejného zdraví a o změně některých souvisejících zákonů* (Act on the protection of public health and on changes to certain related laws, as last amended) is the fact that it concerns the subjective perception of the doctor, often also subject to multiple individual factors, and to a varying degree, depending on the situation.[7] However, we cannot forget that the medical code of ethics is merely a collection of rules, in relation to a certain moral standard, and does not have the same legal weight as a law, for instance. This provision can be interpreted in the following way: from the point of view of the applicable regulations, a doctor has no right to discontinue treatment when the necessary state of mutual trust between him or her and the patient does not exist. However, from the point of view of ethics, the doctor does have that right in such a situation. In other words: using this right is acceptable from the point of view of the Czech Medical Chamber, as an organisation which defines a moral standard for its members, but it is not acceptable from the perspective of Czech law[8].

A similar provision, though in a somewhat more lenient form, can also be found in the Italian *Codex Deontologicus*, prepared in 2014 during a session of the National Federation of the Orders of Physicians and Dentists (FNOMCeO). In Article 23 of chapter 3, concerning the relationship between doctor and patient, we read:

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[5] *Etický kodex České Lékařské Komory*, §2 Lékař a výkon povolání, pkt (4). Own translatation. https://www.lk-cr.cz/stavovske-predpisy-clk-212.html Accessed: 17.10.2018.

[6] Študentová Milada, *Právo na volbu lékaře a zdravotnického zařízení,* [w:] *Interní medicína pro praxi*, No. 9, Ołomuniec 2007. p. 355.

[7] Konečná Jana, *Právo na neposkytnutí zdravotní služby, odmítnuti péče a ukončeni péče,* [in:] *Medicína po promoci*, No. 1/2015, Prague 2015. p. 30.

[8] Cf. Bartůnek Petr, Ptáček Radek, *Etika a komunikacie v medicině*, Prague 2011. p. 86.

> A doctor must maintain the continuity of medical treatment; however, if this obligation cannot be met or if the relationship of trust no longer functions, the doctor ensures a replacement and informs the person being treated of this fact...[9]

The situation in which there is a lack of mutual trust between doctor and patient is developed in Art. 28 of this code. It states:

> If the doctor is of the opinion that the relationship of trust with the patient or their legal representative no longer functions, he or she may end the therapeutic relationship with proper advance notice, while all activities are handled by another colleague until the change takes place. After the written consent of the patient, all information and documents necessary for continued treatment should be transferred[10].

The Italian code also deals with the decision to cease treatment which results from the doctor's subjective perception that the mutual trust no longer functions (*If the doctor is of the opinion* [...]). However, here the decision is of a procedural nature. Doctors must first inform the patient of their intention to change the caregiver, then continue "their" activities through a different doctor, until they have been officially removed from treating the patient. This continuation of already initiated medical treatment clearly shows that the interpersonal trust applies to the doctor as a person, and not to their recommendations for treatment.

An interesting situation appears in the case of the German code of medical ethics. Instead of preparing their own document, German doctors decided to use a code approved at a conference of the European Council of Medical Orders (CEOM) in 2003, under the name *Grundsätze ärztlicher Ethik* (*Principles of medical ethics*). This code was intended to establish the principles for ethical conduct of doctors in Europe and also serve as a model for codes of ethics used within the European Union.[11] Since this document was intended only as a model for a code of medical ethics, many of its articles are quite general in nature. As an example, in the paragraph entitled *Free choice of doctor* we see an entry which allows a doctor to refuse treatment if a patient is not in immediate danger[12]. However, this entry offers no indications for situations where such a refusal would be morally justified, such as the lack or presence of a mutual trust relationship.

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[9] *Codex Deontologicus. Berufsordnung für Ärzte.* trans. Anton Paungger, Ärzte- und Zahnärztekammer Bozen, Bozen 2015. p. 13. The source used is the official translation of the *Codex Deontologicus* from Italian into German. Translated from German into Polish by the author.

[10] Ibid. p. 14.

[11] Sickor Jens Andreas, *Normenhierarchie im Arztrecht*, Springer-Verlag, Berlin Heidelberg, 2005. p. 168.

[12] *Grundsätze ärztlicher Ethik (Europäische Berufsordnung)*, chapter *Freie Arztwahl*, pt. 5. https://www.bundesaerztekammer.de/recht/berufsrecht/muster-berufsordnung-aerzte/medizinethik-in-der-berufsordnung/grundsaetze-aerztlicher-ethik-europaeische-berufsordnung/ Accessed: 18.10.2018.

However, these issues are addressed by the German legal system. In the *Bundesmantelvertrag-Ärzte* (BMV-Ärzte) agreement which regulates contracts between health insurers and doctors, paragraph 13 contains an entry allowing doctors to refuse treatment in justified cases[13]. One such case is the loss of mutual trust between doctor and patient, which can arise in the following situations:

- the patient repeatedly ignores the doctor's recommendations (e.g. concerning the taking of medication or the need to remain in bed)[14];
- the patient persistently requests treatment which is either not medically justifiable or not economically viable[15];
- there are disputes between the patient and the doctor, or when complaints appear[16]

The situations listed here are of a more objective nature, while the loss of mutual trust is not solely based on the subjective perception of the doctor. It is not enough that the doctor believes that the patient does not trust him or her. If a situation were to arise in which a patient shows distrust, or does not seem willing to entrust their health and has an negative attitude towards the doctor, this would still not be a sufficient reason for the doctor to cease treatment and transfer the patient to another doctor. As a reminder, according to the Czech and Italian codes of medical ethics, such a situation would be a morally sufficient reason to discontinue treatment.

The significance of trust within the therapeutic process is also emphasised in the Polish Code of Medical Ethics (*Kodeks Etyki Lekarskiej*, or KEL). This term appears twice in the introductory part of the KEL, the Medical Oath. Graduates of the faculties of medicine and dentistry must swear they will not abuse the trust of patients or undermine trust in other doctors[17]. This provision underscores the relational nature of the ethical value in question, as it is not enough for it to occur only on the patient side – if doctors are convinced that the patient trusts them, they must cultivate this trust in such a way that there is no abuse on their part. In other words: from the moment a diagnosis is formulated, the doctor has a duty to demonstrate that this trust is merited[18].

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[13] *Bundesmantelvertrag-Ärzte vom 1. Juli 2018.*, §13 pt. 8, https://www.kbv.de/media/sp/BMV_Aerzte.pdf, Accessed: 18.10.2018.
[14] Cf. Schell Werner, *Pflege und Recht. Ein Rechtsalmanach für die Pflegeberufe*, vol. 1, Brigitte-Kunz-Verlag, Hagen, 1995. p. 140.
[15] Ibid. p. 140.
[16] Ibid. p. 140.
[17] *Kodeks Etyki Lekarskiej of 2 January 2004: unified text, including the amendments adopted on 20 September 2003 by the Extraordinary 7th National Congress of Doctors.* https://www.nil.org.pl/dokumenty/kodeks-etyki-lekarskiej Accessed: 17.10.2018.
[18] Cf. Sytnik-Czetwertyński Janusz, *Etos. O filozofii i etyce dla lekarzy.* Wydawnictwo Naukowe PWN, Warsaw, 2018. p. 162.

In the main part of the KEL, the concept of trust appears already in the first article and is defined as an indispensable element of the dignity of the medical profession.

> (3) The dignity of the profession is compromised by any conduct by a doctor which undermines trust in the profession.[19]

This point applies in essence to institutional trust, i.e. to the entire medical profession. However, we can also see in it concern about interpersonal trust, since along with losing trust in a broadly-defined health service, patients can also lose trust in the person directly treating them. A concrete example of unethical behaviour on the part of a doctor which could impact trust in the entire profession is mentioned in chapter IIa of the KEL: a doctor accepting benefits from representatives of the medical industry[20].

Trust and the right to choose a doctor

In the codes of ethics discussed above, the relationship of trust is linked to the patient's right to choose a doctor. There cannot be a situation in which a patient must maintain contact with a person whom they do not trust for some reason, which could lead to decreased efficiency of the therapy. This right is a sort of transfer of the point of view of the above-mentioned provisions, from the doctor to the patient. It is not only the doctor who has the right to abstain from treatment if the relationship of trust with the patient is inadequate - the patient also has the right to discontinue treatment based on insufficient trust in the doctor. The right to choose a doctor has a high ethical value, due to the benefits it brings:

- it gives the patient-doctor relationship the nature of a partnership (doctors have the right to discontinue treatment if they do not trust patients, ergo patients can also cease contact with doctors, if they do not trust them)
- trust in the doctor is increased (that a patient seeks treatment with a specific doctor is the consequence of a conscious choice, a voluntary entrusting of one's health to a person chosen by the patient)
- a sense of security (when a patient loses trust in a doctor, another can be chosen – there is no need to maintain a relationship with someone viewed negatively, while the therapy remains uninterrupted)

[19] Ibid. Art. 1, pt. 3.
[20] Cf. Ibid. Art. 51a, pt. 1. *Doctors should not accept benefits from representatives of the medical industry, if this can limit the objectivity of their professional opinions or undermine confidence in the medical profession.*

The right to choose a doctor is guaranteed in the Polish Code of Medical Ethics by the following provision:

> (2) Relationships between patient and doctor should be based on mutual trust; which is why a patient should have the right to choose a doctor[21].

The Italian *Codex Deontologicus* however, defines freedom of choice as the basis for the patient-doctor relationship and links it to responsibility for one's own health[22]. In the Czech Republic, doctors are forced to recognise the right of each person to freely choose a doctor on the basis of pt. 5 §1 of the *Code of Ethics of the Czech Medical Chamber*[23]. In the case of Germany, the right to choose doctors results both from the chosen *Principles of European Medical Ethics* (mentioned in point 5 of the *Free choice of doctor* section, which like the *Codex Deontologicus*, sees the freedom to chose doctors as a fundamental principle of the patient-doctor relationship[24], as well as the law. Treatment is seen as a contract for services with a specific trust status (*Dienstvertrag mit einer besonderen Vertrauenstellung*), which from the point of view of §627 chap. I of the German Civil Code (*Bürgerliches Gesetzbuch* - BGB) allows the patient to break such a contract even without providing a reason[25].

Conclusion

In all the codes of ethics discussed here, the relationship of mutual trust is of great importance. If it arises, then it should certainly be actively cared for by the doctor. However, if it is absent, the doctor faces a dilemma: should contact with the patient be maintained at any cost? As I have shown, codes of ethics handle this situation, in which the relationship of mutual trust is somehow impaired, in various ways. The proposed answer to this question can therefore also vary.

This is due to the fact that ethics is a set of rules operating "from within", which makes it different from the law. It would be absurd to claim that the standards of the Czech code of medical ethics apply solely to Czechs, while those of the *Codex Deontologicus* solely to Italians. One is a doctor not only always, but also everywhere.

In the end, it is doctors who decide, according to their conscience, if their actions (in this case discontinuing treatment due to lack of mutual trust) are right or not. The criterion for

[21] Ibid. Art. 12, pt. 3
[22] *Codex Deontologicus*, op. cit. Art. 20.
[23] *Etický kodex...*, op.cit, §1 pt. 5.
[24] *Grundsätze..., op.cit.* chapter *Freie Arztwahl , pt. 5.*
[25] *Bürgerliches Gesetzbuch,* chap. I, § 627. http://www.gesetze-im-internet.de/bgb/index.html Accessed: 22.10.2018.

rightness here is the best interest of the patient. However, the decision to discontinue treatment should be of a procedural nature. Only when a doctor has decided that all attempts to restore this relationship have failed, and when a more or less objective justification for cutting ties with the patient can be found, should the patient be handed over to another doctor.

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