Professionalism in Healthcare Practice

Back to Basics

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OBJECTIVES

- Definition & role of professionalism
- Challenges to professionalism
- Core foundational values
- Why professionalism in healthcare practice (HCP) is regulated
- Practitioner-Patient relationship
- Are practitioners obliged to treat?
- Rights and duties of patients
- Rights and duties of practitioners
- Role of social media in healthcare
- Telehealth
- Dual loyalty

Conflict of Interest: None

Definition of Professionalism in Healthcare

'an occupation that is characterized by high moral standards, including a strong commitment to the well-being of others, mastery of a body of knowledge and skills, and a high level of autonomy.'

JR Williams 'The future of medical professionalism' (2009) 2 *The South African Journal of Bioethics and Law* 48–50. Available from: http://www.sajbl.org.za/index.php/sajbl/article/viewFile/55/50

What is professionalism in HCP?

- Practitioner–patient relationship: cornerstone of HCP.
- HCP: moral and social contract between profession and public.
- Central to this: professionalism and professional integrity
- Professionalism: sets the standard of what a patient should expect from practitioner.

What is professionalism in HCP?

- Practitioners: important agents through which scientific knowledge is applied to human health - bridging the gap between science and society.

- HCP goes beyond just clinical or technical excellence - also about experiences, feelings and interpretations of human beings in often extraordinary moments of fear, anxiety and doubt.

- In this vulnerable position, professionalism underpins the trust that the public has in healthcare practitioners.

- Professional integrity and honesty should be a measure of the extent to which the professional’s reputation and credibility remains untainted.

Challenges to professionalism in HCP

- Political, social and economic factors together with advances in science and technology - reshaped attitudes and expectations of public and practioners

- Financial pursuits + adverse media coverage have undermined public trust in health practice and have led to a questioning of traditional values and behaviour – challenging characteristics that were once seen as the hallmark of health practice. Professional integrity becomes easily tainted when the nature of the practitioner–patient relationship becomes somewhat transactional and patients are viewed as customers and healthcare as a commodity.

(Royal College of Physicians *Doctors in Society: Medical Professionalism in a Changing World* (2005).

Challenges to professionalism in HCP

- Perceptions of practitioners as healers - eroded by error and iatrogenic injury.

- Emphasis on litigation as a tool in social justice has led to:
  - a greater level of public awareness of the harms
  - adverse effects on public sector health budgets in South Africa
  - sharp increase in professional insurance premiums in high risk medical specialities, eg, O&G

- Trust - critical to successful care. Survey data →level of confidence and trust that was accorded the profession several decades ago has been substantially eroded.

(Royal College of Physicians *Doctors in Society: Medical Professionalism in a Changing World* (2005).

Core Foundational Values

- **Compassion:** understanding and concern for a person's distress.

- **Competence:** extremely high degree of competence measured in law by what a reasonably competent practitioner in that branch of their profession would be expected to do - not limited to scientific knowledge and technical skills but also includes ethical knowledge, skills and attitudes, and an understanding of human rights and health law.

- **Autonomy** - ethical principle whose application has changed most over time with practitioners' autonomy being moderated by governments and other authorities and patient autonomy gaining widespread acceptance.

World Medical Association – Medical Ethics Manual (2015)

What distinguishes healthcare practice from other livelihoods?

- Nature of illness itself:
  - patients being in a uniquely dependent, anxious, vulnerable and exploitative state, being forced into a position of trusting the practitioner in a relationship of relative powerlessness.
  - when practitioners offer to put knowledge at the service of the sick, they invite that trust. Hence, a health need, in itself, constitutes a moral claim on those equipped to help.
- Knowledge gained by practitioner:
  - not proprietary as it is acquired through society sanctioning certain invasions of privacy, e.g. experimenting with humans and allowing for financial subsidisation of health education.
  - therefore, not individually owned and should not be used primarily for personal gain, prestige or power.
- Oath taken at graduation
  - public promise that practitioner understands the gravity of calling and undertakes to be competent and use that competence in the interests of the sick.

ED Pellegrino 'Altruism, self-interest and medical ethics' (1987) 258 *JAMA*

Why professionalism in healthcare practice should be regulated?

- To protect the public from unsafe practices;
- To set professional, ethical standards to ensure quality service;
- To confer accountability, identity and professional status upon practitioners.

- SANC Vision:

  'Excellence in professionalism and advocacy for health care users'

- HPCSA established:

'In order to protect the public and guide the professions, council ensures that practitioners uphold and maintain professional and ethical standards within the health professions and ensure the investigation of complaints concerning practitioners and to ensure that disciplinary action is taken against persons who fail to act accordingly'.

HPCSA 'Overview'; http://www.hpcsa.co.za

Responsibility & Accountability

- Duties of practitioners towards patients - require them to act responsibly and to be accountable for their actions.
- Responsibility: denotes a duty to perform some function in a satisfactory manner.
- Accountability: entails giving an account of one's acts or omissions.'
- By accepting responsibility, a practitioner accepts the responsibilities that go with his or her work.
- Accountability relates to how one exercises responsibility. One has to answer for one's actions.
- Responsibility is the basis for action that requires accountability.

M Dada and D McQuoid-Mason *Phlebotomy Learnership Guide* (2007) 107–109.

Relationship between practitioners and patients: HOSPITAL PRACTICE

- Staff:
  - contract with hospital authority
  - both may be liable for any wrongful acts or omissions causing harm to patients. (authority – vicarious liability)

- Individual employees committing wrongful acts or omissions for which their employers are responsible:
  - may not rely on defence of ‘superior orders’, by claiming that they were ordered to carry out the procedure or treatment by their employers or their agents.
  - if they knew or ought to have known that what they were doing was wrong they will still be held liable. (Life Esidimeni)

Relationship between doctors and patients: PRIVATE PRACTICE

- Contractual relationship with doctor who owes patient a duty of care.
  - for example, previous case law: pregnant woman wrongly advised by doctor that she was not at greater risk than normal of having an abnormal or disabled child, sued for damages in contract and for expenses of maintaining & rearing disabled child & future medical and hospital expenses.

- Legally: can accept or refuse patients provided:
  - not unconstitutional (e.g. unfair discrimination on racial or religious grounds)
  - not emergency - HPCSA ethical rules & section 27 Bill of Rights SA Constitution require doctor to provide emergency treatment
  - non-emergency – may have legitimate grounds for refusing to treat patient (e.g. a full practice) – remember → potential for covert discrimination - not accountable to anyone for refusing treatment.
  - ***DOCTOR'S CONSCIENCE - OVER AND ABOVE ETHICAL CODES AND THE LAW***

Relationship between doctors and patients: PRIVATE PRACTICE

- Appointments - failure to keep:
  - patient liable for any financial loss incurred. Official tariff of fees for members of medical schemes includes rules for the cancellation of appointments. Timely steps must be taken to cancel an appointment: 2 hours for general practitioners and 24 hours for specialists – although each case treated on its merits. (Medical Schemes Rules under the Medical Schemes Act 131 of 1998 (rule D of the General Rules)

  - however HPCSA - unethical for doctors to recover fees for services not rendered - including when patients do not honour appointments. [Booklet 11: *Guidelines on Over-servicing, Perverse Incentives and Related Matters* (2016) para 3.10.4 See Ethical Rules of Conduct for Practitioners registered under the Health Professions Act 56 of 1974, GN R717, 4 August 2006 rule 7.]

Relationship between doctors and patients: GENERAL

- Contract:
  - implied agreement doctor will diagnose patient's complaint, treat patient in usual manner & discuss procedures and their consequences with their patients before treating them.
  - do not guarantee cure - may face damages claims if desired outcome not achieved.
  - remember – medicine is not an exact science & courts don't expect guaranteed cures but to treat patients with amount of skill, competence and care that may reasonably be expected from doctors in their branch of the profession.

- Patient abandonment:
  - inherent to the trust that is essential to the relationship, is that once treatment commences doctors may not abandon their patients
  - agreement only ends once treatment completed or patient no longer wishes to be treated, or for some other justified reason.
  - patients expected to make themselves available for treatment but if they do not doctors cannot force them to do so – unless they are a threat to public health and the court has ordered them to be treated (e.g. patients suffering from XDR TB - *Minister of Health, Western Cape v Goliath* 2009 2 SA 248 (C); COVID-19)

Avoiding claims of patient abandonment

- Defence:
  - transfer case to another competent doctor
  - issue sufficient instructions for further treatment
  - give patient reasonable notice that doctor intends to discontinue attending to patient – must ensure other facilities available (e.g. doctor should issue full instructions for further treatment and indicate his or her willingness to consult with doctor who takes over)
  - patient is cured or does not require further treatment
  - patient refuses further treatment

Rights of Practitioners

- Not be unfairly discriminated against on account of their health status
- Measures to minimise injury or damage to their person or property at the health institution
- Measures to minimise disease transmission at the health institution
- Refuse to treat a patient who is physically or verbally abusive towards them or who sexually harasses them.
- **Rights & Responsibilities of Patients: Patients' Rights Charter**

Duties of Practioners

- Provide emergency medical treatment
- Ensure that patients participate in decision-making
- Obtain informed consent
- Respect confidentiality
- Protect health records
- Provide access to information (including complaints procedures) – except where it will harm the patient

Social Media, Healthcare & Professionalism

- Practitioners should be free to take advantage of the several personal and professional benefits of social media

- Concerns include:
  - blurring of boundaries between an individual's public and professional lives
  - maintaining privacy and confidentiality of patient information
  - public image of the profession
  - inter-professional relationships

Social Media, Healthcare & Professionalism

- *Blurring of boundaries*
  - unknowingly exposed to risk by posting personal material intended for friends, especially where privacy settings not activated
  - information accessible to a wider audience including patients who may attempt to strike up personal relationships leading to inappropriate boundary transgressions
  - once content posted, even if deleted, does not mean has been removed - could already have been copied or reproduced.

- *Confidentiality*
  - may be difficult to maintain - very personal information uploaded during discussion of patients with fellow practitioners through blogs and other sites
  - despite identifiers removed, patient could be potentially identifiable →unintentional ethical transgressions and possible legal ramifications
  - also - many bits of information from multiple sources (e.g. postings from several different team members), when collated together could identify a patient and result in a breach of patient confidentiality.

Social Media, Healthcare & Professionalism

- *Public image of the profession*
  - media might routinely monitor online activity to research stories or look for potential stories
  - information could be taken out of context, and remain publicly available or permanently retrievable online
  - may harm image of profession
  - documented public lapses include: digital photographs during surgery, posing with weapons and alcohol, making informal and derogatory comments about patients, making comments that could be perceived as racist, sexist, or homophobic and other unprofessional posts that ultimately could harm the doctor and the profession.

- *Inter-professional relationships*
  - practitioners should be able to fully engage in online debates on healthcare matters - but individual freedom to voice opinions is not absolute and can be restricted by need to prevent harm to the rights and reputations of others
  - unsubstantiated or negative comments about individuals or organisations must be avoided.

Social Media and Healthcare – Ethical Regulation HPCSA Booklet 16

- Reminder: ethical obligations apply even in social media context
- Advises not to interact with patients via social media because of possibility of failure to maintain strictly professional relationships (s7.2)
- Where patient sends inappropriate messages doctor needs to politely re-establish professional boundaries and explain the reasons for doing so (s7.6)
- If patients seeks health care advice over social media – advise them to set up an appointment in-person, except in an emergency where appropriate advise should be provided (s7.7)
- Where patient persists in contacting doctor - log of all contacts to be kept and doctor to contact HPCSA for advice on how this should be managed (s7.8).

Social Media and Healthcare – Ethical Regulation HPCSA Booklet 16

- Opinions on integrity, skills and professional reputation of colleagues not to be posted - could result in the public losing faith in the profession (8.6).

- Include disclaimers in profiles that views therein are their own and not of the profession or health establishment - BUT this will not absolve them from their ethical obligations (s8.9).

- Avoid conflicts of interest, don't engage in touting (e.g., advertising free coffee while waiting in the practice), canvassing or allowing others to do so on their behalf (e.g., declaring or posting patient reviews that s/he is the best practitioner in the field) (s9.2).

- Do not advertise, endorse or encourage use of any medicine or health-related product in a manner, which unfairly promotes the doctor or organization for financial or other gain (s9.5) - any financial interests should be declared.

Social Media and Healthcare – Legal Regulation

- Relevant laws include:
  - Constitution (1996)
  - National Health Act (61 of 2003)
  - Children's Act (38 of 2005)
  - Promotion of Access to Justice Act (3 of 2000)
  - Protection of Personal Information Act (Act 4 of 2013)
  - Common law.

- Defamation:
  - Person's right to an unimpaired reputation - protected by South Africa's law of defamation
  - Defamation is act of making an unjustified statement about a person or organisation that could harm their reputation
  - This could result in legal action against the individual and their organisation
  - An act is considered to be defamatory if it damages reputation or good name of an individual, lowers the esteem in which they are held in the minds of others or negatively affects what people think of them. Such content attacks a person's moral character, or exposes him or her to derision or ridicule

Telehealth – Brief Overview

- Involves use of telecommunications and virtual technology to allow for health care delivery outside of traditional health-care facilities.
- Video consultations or similar forms of technology allow for the replication of the interaction of traditional face-to-face consultations.
- Virtual home health care has now been made possible, where chronically ill or elderly patients may receive guidance in certain procedures while remaining at home.
- Health care workers in remote field settings now able to obtain guidance from professionals elsewhere in diagnosis, care and referral of patients.
- Also possible to deliver training via telehealth schemes or with related technologies such as eHealth, which make use of small computers and internet.

(WHO. Telehealth https://www.who.int/sustainable-development/health-sector/strategies/telehealth/en/)

Telehealth – Ethical considerations

- Both benefits and risks

- Benefits include:
  - can improve health care access and outcomes, in particular for chronic disease treatment and for vulnerable groups
  - costs and demands on crowded facilities reduced
  - patient referrals sped up
  - one practitioner can provide services to a number of different locations
  - at times of disasters or pandemics (COVID-19) used as platform for patient management and ongoing care.

- Concerns include:
  - accuracy of images or text
  - security and confidentiality
  - telehealth consultations cannot convey same information as a physical consultation.

Telehealth – Relevant Laws

- National Health Act 61 of 2003
- Children's Act 38 of 2005
- Medical Schemes Act 131 of 1998 (as amended)
- Electronic Communications and Transactions Act 25 of 2002 (as amended)
- Protection of Personal Information Act 4 of 2013
- Consumer Protection Act 68 of 2008
- Promotion of Access to Information Act 2 of 2000

Telehealth – Ethical Regulation: HPCSA (Booklet 10)

- "*The practice of medicine using electronic communications, information technology or other electronic means between a healthcare practitioner in one location and a healthcare practitioner in another location for the purpose of facilitating, improving and enhancing clinical, educational and scientific healthcare and research, particularly to the under serviced areas in the Republic of South Africa.*"

- Core ethical values and accountability also applicable - fact that a patient's information can be moved using electronic means does not alter the ethical duties of health care practitioner (s4.2.4).

- Informed consent and respecting confidentiality essential - duty and responsibility of the consulting practitioner to obtain informed consent for telemedicine purposes (s4.64).

- Patient-initiated or second opinion telemedicine to be restricted to situations in which a previously existing doctor-patient relationship exists s4.8.1(a) – but …

Telehealth & COVID-19 – HPCSA

- HPCSA acknowledged new and increased demands for treatment and care of those infected and affected by the virus

- 26th March 2020: Guidance on the use of Telemedicine Guidelines during the COVID-19 pandemic
  - term telemedicine replaced in Guideline Booklet 10, by Telehealth, which included *inter alia* Telemedicine, Telepsychology, Telepsychiatry, Telerehabilitation and remote consultations with patients using telephonic or virtual platforms. (https://www.hpcsa.co.za/Uploads/Events/Announcements/APPLICATION_OF_TELEMEDICINE_GUIDELINES.pdf)

- 17 April 2020: additional Guidance:
  - "Telehealth should preferably be practiced in circumstances where there is an already established practitioner-patient relationship, and where such a relationship does not exist, practitioners may still consult using Telehealth provided such consultations are done in the best clinical interest of patients".
  - Allows fees for Telehealth consultations, but strongly cautions against practices that may amount to over-servicing and perverse incentives.
  - Guidance only applicable during COVID-19 pandemic, as it assists practitioners to continue servicing patients while observing the Disaster Management Act Regulations S27, 11B. (1) (b)

- HPCSA will inform practitioners about the continued use, or otherwise, of this guidance soon after the end of the pandemic. (https://www.hpcsa-blogs.co.za/hpcsa-covid-19-guidelines/)

Dual loyalty & Professionalism

- Simultaneous obligations, express or implied, to a patient or to a third party resulting in a clinical role conflict between professional duties to the patient and the interests of the third party - practitioners have responsibilities and are accountable both to their patients and to a third party and these responsibilities and accountabilities are not compatible between parties

- Practitioner may be employed by the state or private institutions to treat patients and a conflict of role arises between the interests of the employers and those of the patient

- Other third parties include family members, insurers, police, prison officials, military officials, managed care organisations and sponsors of clinical research

- Ethical challenge to practitioner is how to optimise patient protection and act in the best interest of the patient in the face of external third party pressures

- Dual loyalty conflict becomes especially problematic when the human rights of patients are violated.

Dual loyalty & Professionalism

- Practitioner held to ethic of undivided loyalty to further best interests of their patients – when faced with conflict:
  - reaffirm prime obligation is to patients
  - inform patients they acting on behalf of third party but reassure them that they will put their interests first, or refer them to someone else who can.

- Where practitioners feel they should withdraw from the practitioner–patient relationship, do so by explaining the reasons to the patient after:
  - identifying the role conflict and deciding that it cannot be resolved without compromising their ethical duty to the patient;
  - finding that the pressures being exerted on them are real and legitimate;
  - being satisfied that the third party has a legitimate claim on them;
  - appreciating that the conflict of interest will result in violation of the patient's human rights.

Dual loyalty & Professionalism

- Particularly problematic when practitioner chooses to support state interests over and above patients' interests, resulting in harms and wrongs to patients.

- Repressive governments can trigger some of the most insidious human rights violations as a result of dual loyalty conflicts (Biko Case)

- But can also be seen in open societies (Life Esidimeni Tragedy)

- Violations of the right to access health care also arise from
  - policies imposed by governments
  - pressures resulting from the culture of the institution
  - fears or threats of professional harm (e.g. job loss).

- ***The fact that other parties may have interests that conflict with the medical interests of the patient is irrelevant to the health professional's concern for the patient as a patient.***

Dual loyalty & Professionalism: DE Moseneke *The Life Esidimeni Arbitration Report*

'This is a harrowing account of the death, torture and disappearance of utterly vulnerable mental health care users in the care of an admittedly delinquent provincial government. It is also a story of the searing and public anguish of the families of the affected mental health care users and of the collective shock and pain of the many other caring people in our land and elsewhere in the world.'

CONCLUSION

- Moral & social contract
- Core foundational values: compassion, competence, autonomy
- HCP is not a business like other professions
- Advocacy to take forward best interests of patients

CORE RESOURCE: Dhai A, Mcquoid-Mason D. Bioethics, Human Rights and Health Law. Principles and Practice. 2ed (2020)