European **Rev**iew for **Med**ical and **Pharmacol**ogical **Sci**ences 2016; 20: 2755-2757

Commentary
Comment on "The static evolution of the new Italian code of medical ethics"

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Dear Editor,

In the paper "The static evolution of the new Italian code of medical ethics"[1] the authors examine the new Italian code of medical ethics (ICME), published by the Italian College of Physicians (ICP) in 2014[2], in light of the cultural evolution which has occurred in the eighty years since the publication of the last one (2006)[3]. In this time, advances in medicine have given hope to the idea that all types of diseases can be defeated, and patients want to be healed both in the body and the mind. When the doctor fails, he/she is immediately put on trial and risks legal disputes.

The authors take into consideration the two ICME positions and the reaction of the ICP to this situation. The first concerns an apparent greater emphasis on the right of self-determination of the patient, the second a greater involvement of the physician in risk prevention.

The authors properly emphasize the novelty of the ICME that, for the first time, urges the doctor to explain to the patient his/her duty to maintain the agreed therapy. But they express the fear that this could be a limitation of the freedom of the patient. In my opinion, this represents the real completion of the concept of informed consent. In Italy, informed consent has presented a slow progression from the paternalism of the 50'-70's to the duty to inform the patient, even when the outcome is worse, in the 90's[4]. Finally, with the ICME of 2014, also in Italy there is the full statement of informed consent that foresees the patient's responsibility with respect to the agreed therapy. It is the highest expression of the patient's freedom to assert his/her will to heal.

The importance given to the freedom of the patient to heal is also reflected in having considered explicitly, for the first time, the dissent to treatment as a right in itself. The ICME of 2006 referred for the first time to the possibility of the patient to dissent; but in the ICME of 2014 it is considered as a right at the same level as the right of consent.

Here, the self-determination of a capable patient reaches its highest expression and it means that, once the patient has been fully informed of the therapy, he/she has committed to take the responsibility to follow it. As the authors affirm, it is the only way to achieve the therapeutic alliance that allows doctor and patient to move as a team, which allows both to share the possibility that the treatment could inevitably fail, and is therefore not a medical error. In this way the ICME is closer to the code of medical ethics of the American Medical Association (AMA) as shown by the authors[5].

The new ICME gives also more emphasis to the consent of minors by urging the doctor to give all information useful for understanding his/her health condition, in order to achieve a therapeutic alliance with the minor. Previous codes referred to minors only in connection to the legal representative of the minor. In my opinion, the duty for the physician to ask the competent authority in case of a dissent of the minor or the legal representative, does not amount to a restriction of the freedom of the child, as is suggested by the authors, but it means giving the same weight to the child's will and that of the legal representative. It is right that the doctor has a non-partisan authority to which to refer when the consent to a treatment, useful for the minor, given by a capable adult, is lacking. As pointed out by the authors, this position is close to the French code of Medical Ethics[6] which considers the protection of a child's health more important than his freedom of self-determination. It seems a more prudent position compared to that of the General Medical Council in the Explanatory guidance of the Good clinical practice reported by the authors, and that of Scotland, where relatives cannot authorize the treatment refused by

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a minor capable of making a decision. I agree with the position of England, Wales and Northern Ireland, where the doctor «should seek legal advice» when he considers that «treatment is in the best interests of a competent young person who refuses».

The advanced medical directives (AMD) were mentioned in the previous ICME (2006) for the first time. It was affirmed that they must be expressed in a determined and documented form, without any specification. There is no doubt that the new ICME (2014) clarifies in more detail the requirements of the AMD, however as mentioned by the authors, it leaves the physicians with a chance to intervene against the AMD. Nevertheless, I consider that reporting in the ICME the requirements of the AMD means the formal acceptance of the AMD as a valid document that gives voice to the patient who no longer has that voice. Of course, the ICME must still improve, but it is clear that the AMD are accepted by the ICP. This means that physicians willing to agree with the AMD of their patients can feel ethically, and therefore also legally, protected by the ICME. It is important that the doctor provides in the medical records his/her own opinion regarding the will of the patient in reference to the patient's clinical situation.

The position assumed by the ICME has certainly been inspired by the several MDA banks born in 180 Italian cities in the last years[7] and the ICME itself has certainly exerted a driving force on the bill which is now being discussed in the Italian parliament[8]. Nevertheless, one of the five Italian autonomous regions with the special statute, Friuli Venezia Giulia, has already approved a bill which allows citizens to write a living will, which is included in the identity card[9]. Unfortunately, this Act is subjected to the constitutionality proceedings promoted by the Presidency of the Council of Ministers and therefore, at present, not in force.

The authors quite rightly underline the loneliness of the doctor when deciding the ethical appropriateness of care. I believe that the only solution is to apply in each case the concept of therapeutic obstinacy; i.e. check whether there are benefits to mental and physical health and/or improving the quality of life. The benefits for health can be evaluated by the physician but, quality of life depends only on the patient's judgment, which can be deduced by the AMD.

Finally, as pointed out by the authors, the new ICME, compared to the previous code, imposes a higher responsibility on doctors in preventing the clinical risks and in taking into consideration their own and others' mistakes. Interestingly, the authors refer to the regulation of the General Medical Council (UK) and of the AMA, which underlie a medical culture already oriented towards techniques of communication of errors, still foreign to the average mentality of Italian doctors. The code is well done in tackling head on this issue and in highlighting the doctor's obligations in this field. It will certainly serve for a progressive needed cultural change.

In my opinion, the authors judge the code too harshly when, in the conclusion, they state that "A clear boundary … between medicine and professionalism as well as the criteria for determining the scientific evidences that physicians must follow" has not been made in the ICME. In fact, some parts of the ICME provide that the physician, in prescribing therapies, should avail himself of scientific evidence and should also take into account the guidelines accredited by authoritative sources. The ICME also recommends that the doctor evaluates the applicability of the guidelines in all individual cases and their follow-ups. This one, in my opinion, brings the ICME closer to the French, English and American codes cited by the authors.

Of course, the ICME can be improved but, I agree with the authors that progress has been made, and that Italy is approaching a new cultural attitude in medical issues.

Conflict of Interest

The Authors declare that there are no conflicts of interest.

References

1) Montanari Vergallo G, Busardò FP, Zaami S, Marinelli E. The static evolution of the new Italian code of medical ethics. Eur Rev Med Pharmacol Sci 2016; 20: 575-580.

2) Federazione Nazionale degli Ordini dei Medici Chirurghi e degli Odontoiatri. Codice di Deontologia Medica 2014, available online at: https://portale.fnomceo.it/fnomceo/Codice+di+Deontologia+Medica+2014.html?t=a&id=115184.

3) Federazione Nazionale degli Ordini dei Medici Chirurghi e degli Odontoiatri. Codice di Deontologia Medica 2006, available online at: https://portale.fnomceo.it/fnomceo/Codice+di+Deontologia+Medica+2006.html?t=a&id=3694.

4) Calcagni C, Cecchi R. Deontologia medica. Dalla deontologia ippocratica alla bioetica. S.E.U., 2008: 109.

5) American Medical Association. Code of Medical Ethics, Opinion 10.02 – Patient Responsibilities (2001), available online at: http://www.amaassn.org/ama/pub/physician-resources/medicalethics/code-medical-ethics/opinion1002.page?.

6) Conseil National de l'Ordre des Médecins. Code de déontologie médicale, art. 42 (article R.4127-42 du CSP) (2012), available online at: http://www.conseil-national.medecin.fr/sites/default/files/codedeont.pdf.

7) I Registri per il Testamento Biologico la Situazione Per Regioni, Province e Comuni, available online at: http://www.associazioneliberauscita.it/online/testamento-biologico/registrazione/.

8) Regione Autonoma Friuli Venezia Giulia. Legge Regionale 13 marzo 2015, n. 4 Istituzione del registro regionale per le libere dichiarazioni anticipate di trattamento sanitario (DAT) e disposizioni per favorire la raccolta delle volontà di donazione degli organi e dei tessuti. Available online at: http://lexviewint.regione.fvg.it/FontiNormative/xml/xmlLex.aspx?anno=2015&legge=4&id=art2&fx=leg&lista=0.

9) Camera dei Deputati. PROPOSTA DI LEGGE n. 1298: Disposizioni in materia di consenso informato e di dichiarazioni di volontà anticipate nei trattamenti sanitari. Available online at: http://www.camera.it/_dati/leg17/lavori/stampati/pdf/17PDL0012980.pdf.