A social insurance medical ethics having patient's welfare and social justice as goals

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Disclosure

- We have no conflict of interest to report
Background – a basic ethical challenge

• Physicians often have dual roles for their patients in European social insurance, both being:
  • Treating physician
  • Expert to National Insurance
Aim

• To study whether or not it is possible to devise a social insurance medical ethics
  • that covers both the roles of a treating physician and
  • an expert to National Insurance
  • in a way that can be defended as a coherent medical ethics.
Methods

• Conceptual analysis linked to ethical theory
Literature on normative ethics for social insurance medicine

• After extensive literature search 1990 - 2016: 13 works
  • In English (4 works)
  • In German (1 work)
  • In Norwegian (6 works)
  • In Swedish (2 works)
    • (All showed on the last slide)
Ethical values in the welfare state and in medicine – a correspondence

• Welfare state
  • A functioning economy – the value of work
  • Satisfaction of basic needs
  • Social justice
  • Freedom/autonomy
  • Human rights

• Standard medical ethics
  • Beneficence/nonmaleficence
  • Justice
  • Autonomy
AND human dignity and rights
- *The UNESCO Universal Declaration on Bioethics and Human Rights*
Components of a social insurance medical ethics

• First: A medical ethics with human dignity and human rights as the overriding ethical principles.

• And:
  • Work ability/disability and functioning (cf. WHO’s ICF) – basic medical objects
  • Social collaboration in the perspectives of sympathy/empathy and impartiality.
Normative ethical theories on medical ethics

• Beauchamp’s and Childress’ “Principles of Biomedical Ethics” (7th ed, 2013)

Social collaboration in two perspectives

• Sympathy (or empathy)
• Impartiality
  • Michael Tomasello. “The origins of morality” Scientific Am. Sept 2018
  • Impartiality is a criterion of justice.
A morality of collaboration in social insurance medical ethics

• “Empathy and concern for the individual is a prerequisite also for assessments (Begutachtung) in social medicine. They do not stand in contradiction to the neutrality [impartiality] of the expert” (Elisabeth Nüchtern et al 2015).
1st principle: Human rights: recognition and participation

- All human beings
  - have inherent and equal dignity
  - are actors with reason and moral conscience
  - have various social rights (UN Declaration of Human Rights 1948)
- “Full participation of people with disabilities in all areas of life” (WHO’s ICF: 20).
Human rights in clinical practice

- Respecting the patient’s/claimant’s identity and life choices.
- Recognizing her/his own perspective.
- Giving the claimant opportunities to participate and decide in
  - follow-up of sick-listed patients/claimants: situations of choice between different future possibilities
  - writing of social insurance certificate: especially when the future abilities to work are described and assessed.
- This does not signify, however, that the physician should agree or that claimants decide the benefits. The rules of law determine.
2\textsuperscript{nd} principle: Do not harm (nonmaleficence)

• Avoid intervening medically in ways that affects a patient’s working ability negatively.
  • E.g., to sick-list a patient fully for a longer time without any plan how to return to work.
3rd principle: Beneficience – to contribute to patient’s/claimant’s welfare

- In social insurance medical ethics:
  - to help clinically to improve the patient’s/claimant’s workability,
  - to assess if medical conditions for benefits are fulfilled to safeguard the need for economic security.

- Tensions between beneficence and impartiality (justice)
  - The physician as “advocate”
Beneficence in terms of justified paternalism

• The welfare state is built upon a paternalistic way of thinking
  • “People do not always understand what is best for themselves, and they are therefore not able to take care of their interest.”

• A certain amount of paternalism can be ethically accepted because of the amount of welfare and social justice that the paternalism in this context provides.

• In practice, however, the physician should try to obtain shared decision-making with the patient.
4th principle: Autonomy as shared decision making in follow-up of sick-listed patients/claimants

• In follow-up of sick-listed patients, shared decision making means that:
  • The physician should inform the patient about tasks and responsibilities in the process.
  • In a situation of choice, the physician and the patient could discuss for and against the alternatives.
  • The patient/claimant, decides after having discussed with the physician what the legal rules say and what is the best or most important in his/her life.
  • Tensions between autonomy and the paternalism of the Law
Obligations of confidentiality and the duty to inform National Insurance

• There is a conflict between the physician’s obligations of keeping confidentiality and the duty to inform the social insurance administration about personal information about the claimants’ medical conditions and social contexts.

• Social justice seems to justify the disclosure of necessary medical information to social insurance.

• Tensions between confidentiality (autonomy) and justice.
5th principle: Justice as fairness

• Justice: everybody should be treated fairly.
• Can be difficult, because the person should be assessed not only as an isolated individual, but also as a member and participant in a community.
• Competing interests, needs, rights, burdens, and duties have to be equalized in some way.
• The opposite of justice is arbitrariness ( = injustice).
Justice – a complex concept

• Theory of justice requires that:
  • A formal principle of justice and
  • one or more material criteria have to be fulfilled simultaneously.

• Formal principle: “Equals must be treated equally, and unequals must be treated unequally” (Aristotle).
  • Impartiality is a criterion of justice in the formal sense.

• Material principles – for distributive justice:
  • Need
  • Equality
  • Merit
Writing certificate: justice in practice I

• The physician should be informed about the purpose or the mandate of the assessment.
• Assessments should be factual and correct.
• There should be recognized professional standards for assessing disease, functions and work disability.
• And for objectivity: What is the status of «objective findings»? Are cognitive criteria of objectivity known and used?
Writing certificate: justice in practice II

• Assessments related to *material* criteria of justice:
  • Do the claimant have special needs that the physician should describe and assess?
  • Can arrangements be made at a working place to improve equal opportunities for the patient/claimant?
Conclusion

• There is a coherent social insurance medical ethics.
• However, unique for social insurance medicine, are:
  • Tensions between: a) beneficence and justice, b) autonomy and paternalism, and c) confidentiality and justice
  • A need to balance empathy and impartiality
  • Work (dis)ability and functioning are primary professional objects.

• Social insurance medical ethics is a species of medical ethics.
Literature: