LAWS ON MEDICAL ETHICS IN TURKEY FROM THE PAST TO NOWADAYS AND COMMENTS

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Abstract: The responsibility of the physician is also an important theme of the history of Turkish medical ethics. Turks believed in a polytheistic religion, namely Shamanism, before Islam. This religion is a religion with regard to nature. Ottoman physicians were educated in the form of master-apprentice. The responsibility of the physician was examined both by the Islamic Penal Code and by Ottoman Lawbooks in the Ottoman period. Some interesting characteristics were found in some medical manuscripts and some documents in the period of the Ottoman Turks. Afterwards, the responsibility of the physician showed a modern characteristic and some modern laws came into force. An education in the type of medrese (an Islamic High School) was seen in the Islamic World in the Middle Ages. A Medrese was a kind of high school, and this foundation was also seen in the field of medicine. The persons who graduated from medreses got their diplomas in the name of educator in the period of Ottoman Turks. The period of high school began with the foundation of Tıphane and Cerrahhane-i Amire (Medical and Surgical School) in 1827. So, some modern laws were passed about the responsibility of the physician. So, today, a physician is responsible in all the medical practices according to Turkish Criminal Law, The Turkish Obligation Law, Turkish Civilian Law, Medicine and Its Branches’ Law, Turkish Medical Ethics Regulation, Health Protection Law, Turkish Medical Association. The Agreement on Patients Rights with the date of 1998 contains the subjects such as justice, the choosing of of foundation of health, informed consent, fidelity, confidentiality, privacy, veracity, the refuse of the treatment, the suing of the patient. In this paper, we will comment about laws on Medical Ethics in Turkey from the past to nowadays.

Key words: law, history of medicine, malpractice

1. Introduction

In the world of Turks, remarkable developments have always taken place in terms of physician responsibilities and duties and there are many archive materials on it. This study gives examples from such materials and makes some comments.

2. Historical context

Before Islam, Turks followed Shamanism, which was a polytheist totemic religion of nature. In it, the sky, sun, moon, stars, earth and animals were all holy beings believed to have spirits and angels in them and Turks kept a deep kind of mysticism in their souls.

Ottoman physicians held onto Islamic traditions too. For long years, medical training was given by masters to medical students. Therefore, the loopholes
in the Islamic law were tried to be closed and an alternative code of laws based on local traditions was developed. The statutes like those of Fatih Sultan Mehmed, Kanuni Sultan Süleyman and Mehmed IV closed some of the loopholes in the Islamic penal law. The sanctions on physicians were imposed by the edicts of the sultans and mandates of the head physicians until the 19th century. In all the decisions taken during that period, the emphasis was on the fact that physicians could not be held responsible for any medical situation unless the consent of patients was obtained.

3. Aspects of medical ethics in XVIth Century

The Ottoman Turkish physicians of the 16th century kept dealing with physician responsibilities in their books. In a document dated 1573, it is mentioned that the head physician Garaseddinzâde Muhiddin wants to prevent ignorant people from practicing medicine and those who want to do it need to take examinations to be awarded a diploma. A document from the Religious Court Records of the city of Ayıntap (Gaziantep) is dated 1540 and it talks about the removal of stones clogging up the urinary system. For such operations, the permission of patients and the religious court was needed and surgeons were paid a certain amount of money. Physicians could be sued when patients who gave their consent died during or after operations.

4. Aspects of medical ethics in XVII-XVIIIth Century

In the 17th century, physicians and surgeons having informal training from masters were allowed to practice medicine only after taking some examinations and proving that they have perfected their crafts. This was the same in the 18th century and the offices and consulting rooms of the unauthorized physicians were all closed. Some medical manuscripts dated the 18th century and the Ottoman Archives of the Prime Ministry talk about physician responsibilities. In his “Ra’is al Cerrahîn” written in 1720, Cerrah Mes’ud Efendi reports that good physicians are compassionate, good-humored and kind people who do their best to help other people. In 1704 when Ahmed III was the sultan and Nuh bin Abdülmennan the head physician, the decision was taken that ignorant and unqualified physicians were to be prohibited from practicing the profession. In a judgment dated 1729, it is written that medical practice was to be learned from master physicians in an informal training process and a diploma given after passing some particular examinations was needed to become a physician.

5. Aspects of medical ethics in XIXth Century

Some documents dated the early 19th century give information about the understanding of physician responsibilities. A Prime Ministry Archives material dated 1848 reports that the head physicians and physicians of Ayıntab (Gaziantep), Birecik and Haleb hospitals were all dismissed from their posts because of unacceptable behavior. A document dated 1849 is about some new regulations designed to impose that physicians should treat poor patients for free.

Another one dated 1890 is about the investigation launched into the wrong treatment given by Cerrah Malik Efendi at Gümüşsuuyu Hospital. In the Ottoman Empire, patients’ consent was obtained before giving any treatment. It is written in a document dated 1899 that some of the wounded soldiers at Yıldız Hospital were to be operated on after obtaining their written consent.

Before the foundation of the Republic, the Islamic Penal Law was in
force about abortion. A document dated 1788 is a written copy of a final court decision and aims to inform the provinces that the physicians and pharmacists in Istanbul were prohibited from prescribing for abortion. There are also some 19th century documents about abortion. One of them dated 1826 talks about a midwife known as “the bloody midwife” to be punished for prescribing abortive drugs. Another document dated 1828 says that women should never be prescribed abortive drugs. A document dated 1838 is about the announcement of the decision which banned abortion. The 193rd article of the Imperial Penal Law dated 1857 says that people who cause or help abortion are to be sentenced to imprisonment between 6 months and 2 years. The Ottoman Archives of the Prime Ministry show that there were also some physicians who wrote misleading reports. A document dated 1900 says that the Mayor Abdullahim Efendi, who was a lecturer in the Mekteb-i Fünun Medical School then, wrote a misleading report.

As it is the way today, the physicians of those times had to be careful about what they wrote in their reports of any type and abide by all the medical ethics rules. They always tried to adhere to the principles of privacy, loyalty, honesty and not harming patients.

Afterwards, the responsibility of the physician showed a modern characteristic and some modern laws came into force. Penal Code and Civil Law had some articles about this theme. The medical education in Turkey showed three periods. These are the periods of medrese, high school and faculty. The period of high school began with the foundation of Tiphone and Cerrahhane-i Amire (Medical and Surgical School) on the 14th March, 1827, and it continued until the foundation of Mekteb-i Tibbiye-i Adliye-i Şahane in Galatasaray in 1838, and then the period of faculty began. So, some modern laws were passed about the responsibility of the physician. For example Karantina Talimatnamesi (Quarantine Agreement) in 1838, Tababet-i Belediye Nizamnamesi (Agreement of Medicine of Municipality) in 1861 mentioned the responsibility of physicians. Articles 192 and 193 of Ceza Kanunname-i Humayunu (Penal Law) in 1857 mentioned the punishments for abortion. Article 215 of this code had the responsibilities about the revealing of medical secrets. Moreover, according article 182, if a patient died because of his physician’s negligence that was punished.

6. Aspects of medical ethics in XXth Century

Today, if a doctor causes death of a patient because of a technical mistake he is punished with prison sentence according to the article 456 of the Turkish Penal Code.

The Agreement of Patient’s Rights with the date of 1998, 1 August and with the number of 23420 contains the subjects such as justice, the choosing of of foundation of health, informed consent, fidelity, confidentiality, privacy, veracity, the refuse of the treatment, the suing of the patient.

Moreover, Turkish Law of Patients’ Rights, the informed consent of persons is necessary in all of the medical practices.

The law about population planning dated 1965 and numbered 557 was changed. It was issued on 12.06.1967 a population planning regulation and a bylaw about pregnancy termination and sterilization. The law about population planning dated 1983 and numbered 2827 is a modernized version of the law issued in 1965.

According to the Turkish Law of Family Planning with the date of 1983, curettage can be applied up to the 10th week with the desire of woman. Birth control drugs and apparatus can be used with the prescription of physician.
As there was not an administrative law concerning organ transplantation in Turkey before 1979, many operations were not possible to perform and physicians did not have much to do to save lives. The law numbered 2238 and dated 29.5.1979 on transplanting and keeping organs and tissues allowed the operations and relieved physicians of many hesitations.

If a person allows it in his will orally and/or verbally, organ transplantation can be made from his body after he dies. Even if this is not mentioned in the will, the law suggests that the closest relatives can permit transplantation from the dead body.

According to the 14th article of the law, an organ of a person who dies with enormous damages in an accident or natural disaster can be given to an urgently needing patient not considering the will or consent in any way.

7. Conclusion

Moreover, some agreement drafts are present in Turkey. One of them is Rules on Ethics of Medical Profession. It was accepted by Turkish Medical Association. Another law is malpractice law. In near future, it will be passed.

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