

A Code of Medical Ethics for New Zealand

P.D.G. Skegg
Faculty of Law, University of Otago

An extremely rare booklet,¹ printed in Wellington in 1887, states in its introductory paragraph that the Code which follows 'has been adopted by the New Zealand Medical Association as a Code of Medical Ethics for New Zealand'.

The Code of Medical Ethics, as the booklet is entitled, also indicates in its opening paragraph that the Code is 'taken from the Code of the American Medical Association'. With a few trifling exceptions,² the text is identical to that which the American Medical Association adopted in 1847 – which itself owed more than a little to the work of the British physician Thomas Percival (1740-1804).³

It may well have been the first Code to be adopted 'as a Code of Medical Ethics for New Zealand'.

The first issue of the *New Zealand Medical Journal*, dated September 1887, included an account of the Wellington meeting of the 'new New Zealand Medical Association' at which 'a Code of Medical Ethics taken from that of the American Medical Association was adopted'.⁴ It reported that 'This code has been printed, and copies forwarded to every member of the Association'.

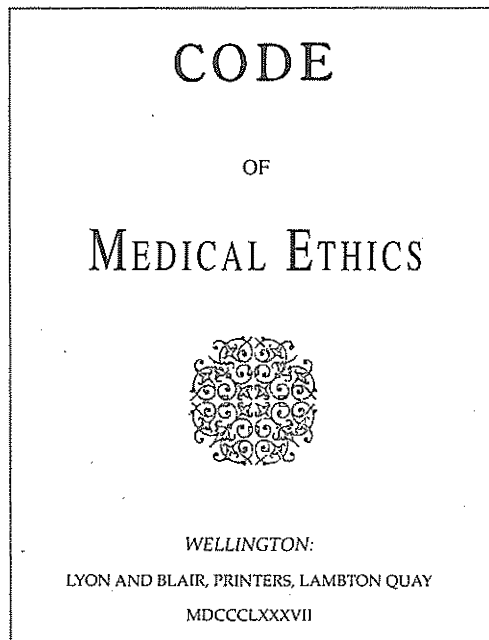
The writer (Dr Isaiah de Zouche, of Dunedin) went on to assert that:

The publication of this Code of Ethics will, without doubt, exercise a most beneficial influence; for while the principles which underlie the relations of physicians with each other and with their patients, ought to be self-evident to any well-balanced mind, yet from the fact that a certain number of medical men in the Colony resort to advertising in various forms, and to doubtful methods of obtaining practice, it is clear that a code which could be appealed to was required.

The Code is in three (unnumbered) parts, headed as follows:

OF THE DUTIES OF PHYSICIANS TO THEIR PATIENTS, AND OF THE OBLIGATIONS OF PATIENTS TO THEIR PHYSICIANS.

OF THE DUTIES OF PHYSICIANS TO EACH



Title page of the Code, reproduced at forty-seven per cent of original size.

OTHER, AND TO THE PROFESSION AT LARGE.
OF THE DUTIES OF THE PROFESSION TO THE PUBLIC, AND OF THE OBLIGATIONS OF THE PUBLIC TO THE PROFESSION.

The second of these three parts is the longest: 2998 words, compared with 1743 and 672 in the first and the third, respectively. All three parts contain much of interest, but this account will focus on aspects of the first.

Like the other parts, it is divided into numbered 'articles', and each paragraph is also numbered. Article 1 is headed 'Duties of Physicians to their Patients'; Article 2 (which is longer) is headed 'Obligations of Patients to their Physicians'.

The opening sentences of the Code set the tone:

A physician should not only be ever ready to obey the calls of the sick, but his mind ought also to be imbued with the greatness of his mission, and the responsibility he habitually incurs in its discharge. These obligations are the more deep and enduring because there is no tribunal other than his own conscience to adjudge penalties for carelessness or neglect.

Given the growth of medical malprac-

tice claims in the United States, and the role in New Zealand of the Health and Disability Commissioner, the Medical Practitioners Disciplinary Tribunal, the Complaints Review Tribunal, and even the High Court, the days when it could be thought that a physician had no tribunal other than the physician's own conscience 'to adjudge penalties for carelessness or neglect' seem very distant.

It was the supposed absence of an external tribunal which was given as the reason for the exhortation which followed:

Physicians should, therefore, minister to the sick with due impressions of the importance of their office; reflecting that the ease, the health, and the lives of those committed to their charge depend on their skill, attention, and fidelity. They should study, also, in their deportment, so to unite tenderness with firmness, and condescension with authority, as to inspire the minds of their patients with gratitude, respect, and confidence.

As the Code was not prepared locally, it should not be assumed that values it reflected were precisely those of the prominent members of the medical profession in New Zealand who were

responsible for its initial adoption – or for the subsequent decision to make it ‘the permanent guide for the Association’.⁵ Nevertheless, it can be taken to provide some indication of an approach considered to be acceptable to leading members of the New Zealand Medical Association in the latter decades of the nineteenth century.

It is interesting to examine what the Code had to say about two matters which, a century later, are central to the Health Information Privacy Code and to the Code of Health and Disability Services Consumers’ Rights respectively.

Confidentiality and Privacy of Health Information

The ‘obligation of secrecy’ is stressed in the second paragraph of the Code of Medical Ethics. Having affirmed that every case committed to the charge of a physician ‘should be treated with attention, steadiness, and humanity’ and that reasonable indulgence should be granted to ‘the mental imbecility and caprices of the sick’, it continues:

Secrecy and delicacy, when required by peculiar circumstances, should be strictly observed; and the familiar and confidential intercourse to which physicians are admitted in their professional visits, should be used with discretion, and with the most scrupulous regard to fidelity and honour. The obligation of secrecy extends beyond the period of professional services; none of the privacies of personal and domestic life, no infirmity of disposition or flaw of character, observed during professional attendance, should ever be divulged by the physician except when he is imperatively required to do so.

The paragraph concludes by noting that:

The force and necessity of this obligation are indeed so great, that professional men have, under certain circumstances, been protected in their observance of secrecy by courts of justice.

Although the language is very different from that of the Health Information Privacy Code, the values reflected in this paragraph are in many respects those which are reflected in recent statements.

Informed Choice and Consent

In contrast, the current emphasis on a competent patient’s right to make

informed choices about treatment is not to be found in the Code of Medical Ethics. The Code does not emphasise patient choice, and it does not even mention consent to treatment. It states:⁶

The obedience of a patient to the prescriptions of his physician should be prompt and implicit. He should never permit his own crude opinions as to their fitness to influence his attention to them.

There is, it is true, a single reference to consent in the first part of the Code. However, this does not refer to the physician obtaining a patient’s consent, but vice versa. The Code enjoins:⁷

A patient should never send for a consulting physician without the express consent of his own medical attendant.

This is the one reference to consent in the physician-patient relationship.

Concluding comment

While there are aspects of the Code which now seem extraordinary, there are other aspects which are admirable. For example, the Code takes a broad view of the Duties of the Profession to the Public. The relevant ‘article’ commences:⁸

As good citizens it is the duty of physicians to be ever vigilant for the welfare of the community, and to bear their part in sustaining its institutions and burdens: they should also ever be ready to give counsel to the public in relation to matters especially appertaining to their profession. . . . It is their province to enlighten the public in regard to . . . measures for the prevention of epidemic and contagious diseases; and when pestilence prevails, it is their duty to face the danger, and to continue their labours for the alleviation of the suffering, even at the jeopardy of their own lives.

The Code should be more widely known – in part because it embodies values which are, in some respects, very different from those dominant today. The differences can aid reflection on the nature of medical ethics, and on the probability that some aspects of the recent codes will themselves come to be seen as quite extraordinary.

References

1 The University of Otago Medical Library, Dunedin, holds the one recorded copy of this 25-page booklet (New Zealand Collection W50 C669; donated by Dr S.A. Gibbs, 1959). There is no copy in the Hocken Library or in the Alexander Turnbull Library, and the booklet does not appear in Dr Hocken’s

Bibliography of the Literature relating to New Zealand (1909), A.G. Bagnall’s more comprehensive *New Zealand National Bibliography* Vol 1: To 1889 (1980), or on the New Zealand Bibliographic Network.

- 2 The 1887 text omitted the introductory note which was printed with the first published text of the code adopted by the American Medical Association in 1847, and it included three subsequent ‘explanatory declarations’. The one addition to the text of the articles themselves was in the second part (or chapter, as it was headed in the 1847 Code), where an explanation of the expression ‘patient of another practitioner’ was provided in square brackets (p19). For the text adopted in 1847, see *Percival’s Medical Ethics* (edited by CD Leake), reprinted edition with supplementary material (1975), Appendix III.
- 3 *Medical Ethics; or, a Code of Institutes and Precepts, adapted to the Professional Conduct of Physicians and Surgeons . . . To which is added an Appendix; containing a discourse on Hospital Duties* (1803); see *Bibliotheca Osleriana* (1929), item 3645. It was first published for private circulation in 1794; see *Morton’s Medical Bibliography* (5th ed, 1991), item 1764.
- 4 ‘The New Zealand Medical Association’ *New Zealand Medical Journal* [First Series], Vol 1, No 1, pp. 5-7.
- 5 *New Zealand Medical Journal* [First Series], Vol 2, No 3 (April 1889), p 190.
- 6 Article II, para 6.
- 7 Article II, para 7.
- 8 Third Part, Article I, para 1.

References for article by Sandra Coney, continued from page 5

- 1 Silvia Cartwright, *The Report of the Cervical Cancer Inquiry*, Auckland, 1988
- 2 Sandra Coney and Phillida Bunkle, ‘An “Unfortunate Experiment” at National Women’s’, *Metro*, June 1987: 47-65
- 3 Cartwright, p. 126
- 4 Sandra Coney (ed.) *Unfinished Business: What happened to the Cartwright Report?*, Women’s Health Action, 1993
- 5 Miriyana Alexander, ‘Life in hands of court’, *Sunday Star Times*, 20 September 1998: A1
- 6 ‘Waiting for colposcopy’, *New Zealand Health Review*, Winter 1998, 1 (1):6
- 7 Sandra Coney, ‘Open letter to the uninformed: Managed care means damaged ethics’, *Health Care Analysis*, 1997; 5: 252-258