Codes of ethics and other illusions

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Periodically, the CMA reviews and updates its Code of Ethics. The association, in consultation with its affiliate societies, has just begun this process again. Given the code's significance, it is important to understand what it really is and to beware of the illusions physicians can harbour about it. Otherwise, this exercise of revising and updating may be misunderstood.

The CMA code is nothing more than a guide to the ethical behaviour of physicians. It is not and should not be seen as the final word from on high. The code does not cover all areas of ethical concern and therefore does not automatically give an appropriate answer to every ethical question a physician might have.

And rightly so. The assumption that the code should function in this way involves several widespread and comfortable illusions. The first is that the code actually captures the ethics of the medical profession.

There is some truth to this, but only a little. The code is merely a series of propositions agreed to and passed by the CMA's General Council. The fact that the council passed them makes them neither ethically appropriate nor defensible. Although the code's clauses may start out based on fundamental ethical principles, when they come before General Council they are at the mercy of considerations that have little to do with ethics. Issues such as politics, self-interest, the fear of public perception and even personal career considerations help determine the code's ultimate shape.

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As well, it is not necessarily true that when the clauses are first formulated they are based on fundamental ethical principles. For example, I know of no ethical principle that would justify the clause "Honour your profession and its traditions."[1] On the other hand, while "Teach and be taught"[2] can be deduced from an ethical principle, that principle is not fundamental.

It is important to raise these issues because the illusion that a code of ethics captures the ethics of the medical profession is dangerous. It leaves physicians with the comfortable belief that because something is in the code, it is ethically acceptable. This is false.

For example, it is ethically false that "An ethical physician shall, except in an emergency, have the right to refuse to accept a patient."[3] Although most modern medical associations have something like this in their codes, traditional ones such as the Hippocratic Oath and the Code of Maimonides contain nothing like it, and with good reason. The ethics of the profession is one of service to humanity, not of personal convenience or preference.

As well, this clause does not acknowledge that medicine is a service-provider monopoly. Therefore, the right of refusing service, which belongs to trades or nonmonopolistic professions, simply does not apply.

Codes of ethics also pose a threat because they become substitutes for ethical reasoning. Their existence encourages physicians who are faced with ethical problems simply to go to the code, look up the appropriate heading and read off the answer. Codes are not encyclopedias. They are maps, and even at their ideal best can give only a general indication of where to look for an answer. Each situation is different and

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each requires independent consideration and evaluation.

The belief that a code of ethics captures the medical profession's ethics also leads to the illusion that ethical matters can be settled by appealing to it. This is dangerous, because instead of suggesting that physicians learn how to reason from fundamental ethical principles, it encourages them to stay at the ethical surface and never really investigate why something that follows from a particular clause in the code actually is — or should be — ethically appropriate. When a situation arises that is not covered by the code the physician will be stumped, sometimes with disastrous consequences.

The belief is also dangerous because it makes physicians dependent on their ability to interpret. Instead of learning how to reason from ethical principles, they learn how to interpret what is written. As well, it encourages doctors to think that if something is not explicitly mentioned in the code, it must be ethically acceptable. Nothing could be further from the truth.

For example, the CMA Code of Ethics says nothing about discrimination on the basis of sexual orientation or age, or about signing preferential leases from companies that own a pharmacy in the building in which the physician has his or her office. The list of things that some physicians consider acceptable because they are not forbidden in the code is long indeed.

The most dangerous illusion may be that being taught a code of ethics is being taught ethics. It fosters the impression that ethics is segregated into distinct areas — there is ethics for nurses, for physicians, for lawyers, for everyone. This obscures the fundamental fact that ethics is the same for all, no matter what profession or walk of life. What differs are the situations in which people find themselves, not the principles that should govern their response.

To teach ethics it is necessary to teach the fundamental principles, not the clauses that derive from them. A failure to see this places medicine in an ethical ghetto and makes physicians lose moral contact with the rest of the world. The Ontario case of *Malette v. Shulman*,[4] which dealt with the treatment of a Jehovah's Witness patient, and the New Brunswick case of *McInerney v. MacDonald*,[5] which dealt with patient records, are two good examples of what the law thinks of this.

The final illusion is that the physician who follows a code of ethics is therefore ethical. A code does provide for consistency, but being consistent and being ethical are not necessarily the same thing.

Nothing that I have said in any way detracts from the importance of the CMA Code of Ethics, or from the importance of reviewing and rewriting it. What I have tried to do is put the code and the exercise of rewriting it into a proper light. The code is a guide and as such it is useful. However, it is no substitute for careful ethical consideration based on the fundamental ethical principles of society itself.

References

1. *Code of Ethics*, principle I, Can Med Assoc, Ottawa, 1990
2. Idem: principle V
3. Idem: clause 12
4. *Malette v Shulman*, [1990] 72 OR (2d) 417 (Ont CA)
5. *McInerney v MacDonald*, [1990] NBJ no 106, action no 74/89/CA (NBCA)