

Chapter 144

Preventive medical right and its correlations with the deontology of health, education, good governance and compliance

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ABSTRACT

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1 INTRODUCTION

Deontology in health became an even more fashionable concern from 2005, after the edition of the Manual of Medical Ethics of the World Medical Association, which guided the mandatory study of Medical Ethics, Biotics and Rights through years in health sciences courses around the world, thus welcoming a curricular proposal that had been debated since the early 1980s.

Since classical antiquity, with Plato, education has already been conceived as an instrument of continuing formation capable of building the consciousness of healthy citizens, focused on good and able to contribute to the improvement of life in society.

Plato had education as a virtue and said that the roots of any society lie within the soul of each person. Hence the need to educate ones, because only education can create better men.

In this article, we will examine the importance of the lawyer (that lawyer who is willing to develop his own conscience to approach the truth) in the construction of an environment of respect for integrity and conformity in the area of health.

2 THEORETICAL FOUNDATION

2.1 EDUCATION AS A VIRTUE AND ETHICAL AND MORAL FORMATION

In *The Republic*, Plato analyzes the foundation of virtuous life and investigates the essential elements of the formation of citizens. The philosopher comes to the conclusion that man should not only be educated to politics or the doings of the polis (as the sophists believed), but rather in an integral way (body and soul), that is, he should have an education oriented to physical health and the construction of moral conscience.

Plato said that "to educate is to form a virtuous man. (...) the citizen must perform his function in society, according to his capacity (*dynamis*). To this end, Plato uses as an example the function of the eyes

that have as virtue the function of seeing. In this case, virtue is a function for this" (SILVA and MELO, 2022, p. 248-9).

Plato was convinced of the existence of two kinds of discourse: the true and the false, and exactly to combat the second is that he establishes the idea that true knowledge is the knowledge of good (good is the truth itself). Truth, according to the philosopher, is the only power capable of ridding man of wrong opinions, of detouring paths and leading him to wisdom, to what he called the world of ideas (higher plane).

Good, therefore, tell us SILVA and MELO (*op. cit.*, p. 250), is the supreme idea that underlies the intelligible world. In Plato's epistemology, the knowledge of truth passes inexorably by reason (*episteme*). If it were not so, everything would be *mere opinion (doxa)*, simple rhetoric, which eventually could even convince the citizens, but which would not necessarily imply a truth, in an articulated substance (*logos*).

Education has a moral purpose that corresponds to a set of knowledge and codes of conduct that lend themselves to establishing an ideal of equity and adequacy of conduct (through common sense, balance, temperance, responsibility and prudence).

2.2 PEDAGOGICALITY

We emphasize the need to integrate the lawyer not only in the management teams, but especially in the tasks of promoting the ethical and moral education of health professionals within the organizations.

Continuing education in health deontology is indispensable to the ethical and moral construction of the actors involved in the activities of health facilities, with a view to the good achievement of business and the construction of the good name of these organizations.

2.3 HEALTH DEONTOLOGY

In recent years, especially since 2015 - after the scandal of the so-called "Mafia of Prostheses" ⁻¹, the supplementary health market and the public sector, within the framework of the Unified Health System, began to be strongly concerned with the management of health resources and the relations between professionals (whether public or private), laboratories, pharmaceuticals and medical equipment industries.

It is true that since 2010 the Federal Council of Medicine had been editing standards to prevent the choice of the single brand doctor or manufacturer of orthotics, prostheses or implantable materials. In 2012, the Council directed the Ministry of Health and the National Agency for Supplementary Health (ANS) to seek, before the National Congress, the regulation of prices of these materials.

However, nothing was done to prevent the escalation of criminal organizations, which continued, in the absence of control, to monopolize the implant market, to use the seal of unscrupulous physicians to

¹ The Mafia of Prostheses was a million-dollar fraud scheme discovered in 2015, involving industry, suppliers and doctors, and acted through unnecessary indication of surgeries, the abusive commercialization of orthotics and prostheses with overpriced prices, causing billion-dollar damage to the Unified Health System (SUS).

indicate unnecessary surgeries and certain brands or equipment in exchange for money or favors, and to practice unimaginable conduct, with enormous losses to Brazilian society.

In this scenario, the implementation of the so-called corporate governance in health emerged as an alternative, which seeks to promote integrity and compliance in public and private management, using the *principles of transparency (disclosure), fairness and accountability*, in addition to the use of *Compliance*, a system of action complementary to governance that operates with a view to alignment of interests and efforts, "ensuring integrity as a result, achieved after a path marked by conformity and ethics" (CARLINI and SAAVEDRA, 2020, p. 22).

Within this perspective of avoidance of error, it was essential to adoption of best practices in the execution of the actions of health professionals. In this context, education, as an instrument capable of forming and transforming the conscience of men, is a way to build people able and prepared to work in cultural formation and also in the rehabilitation of ethical and moral values within their respective fields of professional activity.

One of the rational approaches to ethics, focused on decision-making orientation, is exactly deontology, which can be conceptualized, according to the Manual of Medical Ethics of the World Medical Association, *such as verbis*:

Deontology involves a search for well-founded rules that can serve as the basis for making moral decisions. An example of such a rule is, "Treat all people as equals." Its foundation may be religious (for example, the belief that all God's human creatures are equal) or non-religious (for example, human beings share almost all of the same genes). Once the rules are established, they have to be applied in specific situations, and here there is often room for disagreement about what the rules require (for example, whether the rule against killing another human being would prohibit abortion or capital punishment) (WMA, 2015, p. 29)²

2.4 BOA GOVERNANCE IN SAÚDE:

There is no doubt about the lawyer's importance within the framework of *the compliance departments* of health establishments, especially with regard to the direction of actions aimed at conflict resolution.

The tools of good governance, the search for compliance of actions and the guidelines established by the deontology coexist, after all, for the benefit not only of organizations, but also in favor of the balance of social relations.

In this court, an adequate strategic planning elaborated by the legal and multiprofessional team, together with the fulfillment of good practice policies, include values, principles, objectives, goals and behavioral guidelines (CARLINI and SAAVEDRA, 2020, p. 36) that will contribute to the better

² Free translation: Deontology involves the search for well-founded rules that can serve as a basis for moral decision-making. One example is, 'Treat all people as equals.' Its foundation may be religious (for example, the belief that all of God's human creatures are equal) or non-religious (for example, humans share almost all the same genes). Once the rules are established, they have to be applied in specific situations, and there is often room for disagreement about what these rules require (for example, whether the rule prohibiting killing a human being also brings in itself the conclusion that abortion or capital punishment is prohibited).

functioning of the organization, to the realization of legal and administrative norms and to the avoidance of internal conflicts and reducing agency costs and other liabilities arising from regulatory sanctions or court convictions.

Health is a fundamental right, having an unavailable social right (Articles 6 and 196 of the 1988 Constitution), being closely related to the right to life, security, the integrity of the body and, certainly, the realization of the postulate of human dignity. The right to health is in the spectrum of what has been called the "existential minimum": a set of goods and utilities indispensable to decent life. This set of assets and utilities must be implemented, in principle, by the State.

But in parallel with the idea that the Social State must provide everything, lies the certainty that the State cannot be the universal insurer of all possible ills of citizens, precisely because its resources are scarce and, in addition, there is a component to be considered with greater ethical value: the State cannot overcome itself to man, must be, yes, inside it.

The State, according to Plato, is one of the first conditions of civilized human life, but provided that – only – it has an educational function that enables the conquest of freedom by citizens, obviously included in this conquest, economic freedom.

We want to say that the State cannot use the educational institution to shape citizens and imprison them in apparently ethical formulas, which prove to be dissociated from morals, the supreme good and traditional civilizing values.

Education, Mário Vieira de Melo teaches, is a duty of the democratic state that is intended for citizens with the purpose of enable them to exercise fully and conscious constitutional freedoms, freedoms that are not given *a priori*, but must be conquered by citizens.

Hence why, just to cite one example, it is not up to the State, by executive order, to remove the CPF of millions of debtors from the defaulting registers, giving people an unearned economic freedom. It is up to the State, and this is what Plato spoke of, to offer citizens, through education, technical and moral training that allows them, to point their own economic freedom, providing their own means without ideological ties.

2.5 COMPLIANCE:

Health professionals are necessary for the realization of the fundamental right to health, provided directly by the Public Power (art. 196 CF) or on a complementary or supplementary character (art. 199, *caput* and §1 ° of the CF). Hence our concern to examine sensitive points related to the theme of ethical and legal responsibility of these professionals, seeking to point out some ways to reduce the risks of the activity.

We understand that the conduct of professionals should be first and foremost preventive, not only from the technical point of view, but also from the point of view of the doctor-patient relationship. Tudo goes through the construction, in the consciousness of each of the agents, of an ethical minimum (sense of responsibility and proportion) and moral (respect for traditional civilizational values).

Preventive Medical Law requires not only isolated legal knowledge, but the ability to analyze concrete and hypothetical situations in order to anticipate errors, predicting possible future controversies and providing working methods capable of avoiding unnecessary harm.

In this field, *Compliance* is one of the most effective tools. The lawyer specializes in this area and the multidisciplinary team assumes the governability of the blind spots of the organization and can foresee and conjecture about hypothetical situations, making necessary connections with its institutional reality, seeking the avoidance of litigation.

Even if the dispute occurs and is even inevitable, the jurist and his team will be able to find faster and less costly solutions through alternative techniques and methods of solving conflicts.

We can intuit that:

"The sage sees meaning in everything and helps the good to always win, for he knows things as they really are as to their strength and their essence that impels them to succeed inevitably, even when appearances and opinions cover them temporarily. (...) Those who do not possess this superior capacity to learn and the intimate ordering of truth as a form of the soul, *as ethos* of the whole soul, or who allowed this aptitude to pervert, to this nor Linceu any will be able to open their eyes" (STENZEL, 2021, p. 315).

2 PROTECTION OF CONSCIENCE AND DEFENSE OF TRUTH

The great challenge of Brazilian society – and why not global? – is to combat the process of scrapping consciences, which affects the entire civilizing effort of at least four millennia in the Western world.

The idea remains that it is necessary to take care of the intellectual formation of citizens, not to shape it, but to make them sufficiently capable of conducting themselves in a more responsible, fairer and virtuous way. The demolition of consciences, the result of ethical relativism and educational malformation, implies the loss of identity and the referential proportion (or weights and balances).

Cultivating morality, ethics and its deontological fraction is due to the constant effort in search of the unity of knowledge, and this implies not only in the domain of practical knowledge, but essentially in the domain of universal spiritual values (traditional ethics).

3 CONCLUSION:

The health activity involves increasingly risky and bureaucratic situations, putting its agents always facing probable financial losses, with repercussions on the professional career.

In the vast majority of cases, physicians, dentists and other *players* received little information on how to act within the limits of Deontology and Law. Such knowledge, although essentially, is responsible

for risk control and conflict prevention. Although this work aimed at prevention is invisible, the results are fundamental for the maintenance of organizations and the sustainability of the business

Preventive Medical Law (together with education, good practices, good governance, deontology, a sense of responsibility and, especially, *Compliance*) should guide the conduct of agents, thus enabling the balance of legal relations. The advantages will be of all: health professionals acting with lower risk, mayor tranquility and safety and patients consuming more reliable services.

REFERENCES

MELLO, Mário Vieira. O Conceito de educação da cultura, Mário Vieira de Mello com referência ao esteticismo e à criação de um espírito ético no Brasil. Ed. Paz e Terra: São Paulo, 1986

PLATÃO. A República. Trad. José Cavalcante de Souza, Jorge Paleikat e João Cruz Costa. São Paulo: Abril, 1972.

SILVA, Edson; MELO, Maria A. *Pedagogia moral e intelectual proposta por Platão*. Caderno Intersaberes, v. 11, n. 32, Curitiba, 2022, p. 245-259. <https://www.cadernosuninter.com/index.php/intersaberes/article/view/2140/1776>. Acesso em 26 out 2022.

WMA. **Medical Ethics Manual**, 3^a ed. WMA: Ferney-Voltaire, 2015. [Mehttps://www.wma.net/wpcontent/uploads/2016/11/Ethics_manual_3rd_Nov2015_en.pdf](https://www.wma.net/wpcontent/uploads/2016/11/Ethics_manual_3rd_Nov2015_en.pdf). ISBN 978-92-990079-0-7. Acesso em 24 out. 2022.