Rights and responsibilities – a two-way street

The most frequently asked questions when I speak to a group of doctors are: “We’ve heard all about the patient’s rights. Do patients have any responsibilities? And do doctors have any rights?” The answer to both questions is “yes”.

Although the Code of Health and Disability Services Consumers’ Rights only spells out the legal rights of the patient, rights and responsibilities are a two-way street. In practice, issues of patient responsibility frequently arise in seeking to resolve a complaint (through advocacy, mediation, or an investigation).

Clause 3 of the Code sets out a common sense defence that a doctor who shows that he or she took “reasonable actions in the circumstances” to give effect to a patient’s rights will not be found to have breached the Code. “The circumstances” are defined to mean “all the relevant circumstances”. If a patient is rude and abusive during a consultation, the doctor’s ability to take a careful history will be constrained. If a patient makes an informed decision to refuse a recommended treatment, the patient cannot later be heard to complain about inferior treatment.

Outback lessons

The Northern Territory of Australia has recently adopted a Code of Health and Community Rights and Responsibilities (August 2002) that sets out a number of patient responsibilities. All are relevant (and potentially applicable via clause 3 of the NZ Code) in the New Zealand context.

Whereas the traditional emphasis of informed consent is on disclosure of sufficient information by the doctor, the Territory Code affirms patients’ responsibility, “to the best of their ability, to: (a) provide accurate and timely information, about their past care and treatment and issues affecting their condition; and (b) inform the provider of issues that might interfere with participation in care or treatment recommended by the provider”. As growing numbers of patients choose to shop around and seek both traditional and alternative treatments, it is essential that GPs are aware if a patient is receiving other therapies. Many patients are unaware that some herbal remedies, for example, can render certain medications ineffective or even harmful. The Territory Code reinforces the need to disclose “accurate and timely information”.

Doctor safety

An intriguing responsibility in the Territory Code – which applies to the consumer, family members, friends, carers, and advocates – is to ensure that they “do not endanger or deliberately put the safety of the provider or other service users at risk”. New Zealand doctors report a worrying trend for unhappy patients to make an explicit threat. A common trigger is a doctor’s failure to provide treatment on demand (eg, antibiotics that are not clinically indicated) or provision of a medical report that does not support a patient’s case for ACC or other benefit entitlement. Sometimes a doctor’s honest admission that further treatment will be futile can provoke a hostile reaction. A surgeon recently wrote to tell me: “During an extended family meeting, the grandfather threatened to kill me if his grandson did not make the expected recovery from the cancer.” Any threat directed against clinicians – let alone a threat to kill – is totally unacceptable and a breach of the trust and mutual respect necessary between doctor and patient/family.
A frustrated patient will occasionally follow up a threat with a complaint to the Health and Disability Commissioner, even though the doctor has a more legitimate basis for complaint. In cases where the patient has threatened to harm the doctor, I would have no hesitation in dismissing the patient’s subsequent complaint – even if there are no legal sanctions I can apply to the patient’s behaviour.

Mutual respect
The mutuality of the patient–doctor relationship is recognised in the Territory Code’s statement that “both have a responsibility to treat each other with respect and consideration”. The New Zealand Code trumpets, in Right 1(1), the right of every consumer “to be treated with respect”. While that right is fundamental, so too is the unstated corollary that a provider is entitled to be treated with respect. Although vestiges of paternalism and hierarchy linger in the medical (and indeed the legal) profession, the egalitarian notion that a doctor is a mere provider of information and services, to be treated with no more (and often less) respect than a checkout operator, is misplaced. Common courtesy, and recognition of years of training and experience, suggest that health professionals should be treated with respect and consideration.

Honest complaints
The oft-cited vexatious complaint is rare in practice. In truth, many complaints are vexing for the doctor, but few appear to be made with vexatious or malicious intent. (Where a complaint is made vexatiously or not in good faith, the law allows me to take no action on the complaint.) But the Territory Code makes a telling point in stating that “users and providers have a responsibility to be fair, truthful and accurate when making or responding to a complaint”. It is not unknown for a provider to alter records following a complaint (as evident in a recent Dental Council disciplinary decision), but complainants may also stretch the truth in recalling events. At such times, it is particularly helpful if the doctor has kept contemporaneous notes of each consultation.

The concept of fairness in making and responding to a complaint is a valuable one. Aggrieved patients sometimes pursue a complaint notwithstanding a genuine explanation and apology from a doctor. Conversely, doctors on the receiving end of a complaint occasionally respond with a bitter tirade against the patient. Neither approach is consistent with a responsibility to act fairly.

Pendulum swings
The rights-based models that spawned numerous statements of individual rights in the late 20th century need to be interpreted in the real world, where individuals (and communities) also have responsibilities. In the health care context, it has been an important advance to recognise that patients have rights – notably to confidentiality, competent care, adequate information, and to give or withhold consent. These rights are not diminished by the belated recognition that patients have responsibilities along the lines usefully set out in the new Northern Territory Code.

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