

MEDICAL OATHS: WHEN RELIGION AND ETHICS COLLIDE

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Introduction

The main aim of this paper is to analyse the relationship between different medical oaths, particularly the certain moral standard attached to them, and the concept of patient's autonomy with regard to refusal of medical treatment on the grounds of religious beliefs. This topic appears particularly important nowadays, in the light of criticism by medical ethicists of the paternalistic model of doctor-patient relationship and the desired autonomous approach to patients. In the first section of this paper, medical oaths of prime importance, their history and functions are presented. Furthermore, arguments supporting and opposing the ethical professional standard which they promote are discussed. The second section discusses the principle of patient's consent to medical treatment. In the third section, the problem of patients who refuse medical treatment on the basis of religious grounds is examined. Lastly, the paper discusses practical moral problems that physicians may face when a patient refuses medical treatment.

I. Medical Oaths

Medical oaths dictate the ethos of the medical profession. These 'ritualistic declarations'¹ recognise the extraordinary relationship that exists between physicians, patients, and the society as a whole. Although they do not impose legal obligations² and cannot guarantee ethical conduct, medical oaths are of great significance in the contemporary world. There are three main functions of medical oaths that may be distinguished in the modern era.³ Firstly, they serve as a voluntarily incurred professional obligation to practice medicine in accordance with the code of ethics affirmed in the text. This use has led to modern adaptation of the traditional Hippocratic Oath in order to accommodate changes in social and professional expectations of moral conduct. Secondly, swearing an oath amounts to a formal acknowledgment to society about the common ethics of the medical profession as a whole. It establishes a new moral standard which is superior in comparison to that required from an ordinary man. Society may therefore hold reasonable expectations of physicians, which extend beyond the scope of a moral duty that is normally expected from other professions. The most obvious example of that would be the duty to provide treatment to people in need of emergency care despite their low income or lack of insurance.

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¹ E. Dickstein, J. Erlen, J.A. Erlen, 'Ethical Principles Contained in Currently Professed Medical Oaths', *Academic Medicine* 1991-66, p. 622.

² Legal obligations imposed on physicians can be usually found in national legislation, such as the Dutch Act on the medical treatment contract of 1 April 1995, being part of the Dutch civil code; the Spanish Patient Rights Law; the French Act No. 2002-303 concerning the rights of patients and the quality of the health system (amending among other things the Public Health Code and the Civil Code) or the Danish Health Act - Law No. 546 of 24 June 2005. The general right to health care of every citizen may be also part of constitution, i.e. article 68.1 of the Polish Constitution or article 111 of the Latvian Constitution.

³ D.C. Smith, 'The Hippocratic Oath and Modern Medicine', *Journal of the History of Medicine and Allied Sciences* 1996-51, p. 484.

Thirdly, an oath has been and is being used as an affirmation of traditions. The oath takers therefore are fully conscious of long-standing heritage of social and professional responsibility. This apprehension may attract the right persons to the profession and inculcate in the oath takers these moral responsibilities.

Although a number of medical oaths existed or exist worldwide⁴, the three most important and influential ones are the Oath of Hippocrates, the Declaration of Geneva, and the Oath of Lasagna.⁵ Firstly, the classic Oath of Hippocrates of Kos originates from the 5th century BC and is believed to have been written by Hippocrates himself⁶. He is generally considered as one of the most outstanding persons in the history of medicine and often referred to as the 'Father of Medicine'. His name is also largely synonymous with the 'Hippocratic School of Medicine'⁷ and is connected with the most innovative period of medicine in ancient history, especially considering that he was the first person who believed that diseases are not a direct result of superstition or intervention of the gods, but are caused naturally. The Hippocratic Oath was intended to be a guideline for those entering the medical profession, and is nowadays considered the most famous text in Western medicine. It imposes certain obligations on physicians, such as adhering to prescription of beneficial treatment, according to physician's abilities and judgment; refraining from causing harm; and living a model professional life. The oath also distinguished the genuine physicians from quacks by describing the non-allowed practices, such as performing an abortion or assisting suicide. Although the oath did not become significant until the Renaissance, after 1500 it was widely adopted by the medical profession as the binding professional code of conduct.

Secondly, the Declaration of Geneva adopted by the General Assembly of the World Medical Association in 1948, and amended in 1968, 1984, 2005 and 2006. The Declaration is generally perceived as an instant reaction to the atrocities committed by Nazi Germany physicians who conducted horrendous experiments on thousands of prisoners in concentration camps, such as Auschwitz or Ravensbrueck.⁸ The practices inspired and driven by

⁴ Such as the Sun Simiao Oath, the Nightingale Pledge, the Oath of Maimonides, the Oath of Asaph, the Vaidya's Oath, the Seventeen Rules of Enjuin, or the EMT Oath.

⁵ Full texts of all oaths discussed in this article can be found on the Association of American Physicians and Surgeons website, see: <http://www.aapsonline.org/ethics/oaths.htm>.

⁶ Ludwig Edelstein, a famous historian of medicine, postulated however that the Oath was written by Pythagoreans as their manifesto, see: L. Edelstein, *The Hippocratic Oath: Text, Translation and Interpretation*, Baltimore: The Johns Hopkins Press 1943, pp. VII – 64. Nowadays, his opinion is generally criticized due to lack of the historical evidence, see: P. Prioreschi, 'The Hippocratic oath: a code for physicians, not a Pythagorean manifesto', *Medical Hypotheses* 1995-44, pp. 447-462; O. Temkin, *On second thought and other essays in the history of medicine and science*, Baltimore: The Johns Hopkins Press 2002, Chapter 2.

⁷ For more information about Hippocrates and his school of medicine, see: C. Jankowski, *Hippocrates: Father of Medicine*, North Mankato: Compass Point Books 2009; J. Jouanna, *Hippocrates: Medicine and Culture*, Baltimore: the Johns Hopkins Press 1998; E.D. Phillips, *Aspects of Greek medicine*, London: Taylor & Francis 1987, especially chapters III, IV, V.

⁸ The physicians were tried and convicted in Nuremberg during the 'Doctors' Trial', formally known as *the United States of America v Karl Brandt, et al.* In fact, merely twenty three of them were found guilty of breaching the code of medical ethics. Out of them, fifteen were convicted, seven were condemned to death, and eight received prison sentences from ten years to life. The majority, among whom Josef Mengele (known as the 'Angel of Death'), escaped their crimes. For more information on Nazi human experimentation and the 'Doctors' Trial', see: R.J. Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide*, New York: Basic Books 2000; G.J. Annas, *The Nazi doctors and the Nuremberg Code: human rights in human experimentation*, New York: Oxford University Press 1995; A. L. Caplan, *When Medicine Went Mad*, Totowa: Humana Press 1992; G. Aly, P. Chroust and C. Pross, *Cleansing the Fatherland: Nazi Medicine and Racial Hygiene*, Baltimore: the John Hopkins University Press 1994, especially Chapter 2; M.H. Hangover, *Doctors Under Hitler*, Chapel Hill: University of North Carolina Press 1989; and P. Heberer, J. Matthaues *Atrocities on trial. Historical perspectives of on the Politics of*

the desire to create 'Aryan master race' legitimised the physicians to conduct experiments which included "high-altitude experiments; freezing experiments; malaria experiments; mustard gas experiments; (...) bone transplantation; epidemic jaundice; sterilisation experiments; poison experiments (...)."⁹ The experiments resulted in permanent disabilities and the deaths of prisoners.¹⁰ The Declaration of Geneva was drafted in deliberate opposition to such practices, and it remarkably obliges physicians to "not use medical knowledge contrary to the laws of humanity".¹¹ The Declaration serves as a modern "revision of the ancient Hippocratic Oath"¹² by restating the ethics and the moral conscience of the medical profession in a form that could be acknowledged in the twentieth century. Importantly, parallel to the ancient expression "to help the sick" the Declaration affirms that "the health and life of my patient will be (the physician's) first consideration".

Thirdly, the Oath of Lasagna is perceived as another model of a modern revised version of the traditional Oath of Hippocrates. The oath was created in 1964 by Louis Lasagna, the Academic Dean of the School of Medicine at Tufts University, known as the 'father of clinical pharmacology'. Nowadays, the oath is commonly used in medical schools, especially in the United States and Canada. It strongly emphasises certain values, such as compassion, humility and caring. The most significant part of the oath signifies that patients should be treated as human beings and not "textbook cases"¹³, which underlines the "human side of medicine". Students are also reminded that "warmth, sympathy, and understanding may outweigh the surgeon's knife or the chemist's drug"¹⁴ which is concurrent with the desired modern approach to medicine.¹⁵

The first significant medical institution that included the classical Hippocratic Oath to its curriculum was the German University of Wittenberg in 1508. However, it did not become a standard part of graduation ceremony until 1804, when the Montpellier medical school in France fully incorporated it into the commencement exercises. During the nineteenth century several European and American universities adopted the oath, but this practice was not commonplace. As indicated by the 1928 survey undertaken by the Association of American Medical Colleges¹⁶ only 19% of the medical schools in the United States required their students to swear any type of oath.

Prosecuting War Crimes, Lincoln: University of Nebraska Press 2008, where the authors argue that in fact the Doctors' Trial "missed the opportunity to define the principal crimes of German physicians".

⁹ Secretariat of the International Military Tribunal, *Trials of war criminals: Before the Nuremberg Military Tribunals Under Control Council*, Washington: US Government Printing Office 1949-1953 pp. 37-55.

¹⁰ Their ultimate aim was to 'purify' the German society from individuals being perceived as threats to the health of the nation. It was referred to as "lebenunwertes Leben", therefore "life unworthy of life".

¹¹ The Declaration of Geneva, para. 9, it can be accessed on the World Medical Association's webpage, see: <http://www.wma.net/en/30publications/10policies/g1/index.html>.

¹² World Medical Association Council Meeting In Paris, 8-10 May 1997, http://www.wma.net/en/40news/20archives/1997/1997_14/index.html,

¹³ M. Welfare, J. Carter, *The Foundation Programme: the Medics' Practical Guide to Thriving and Surviving*, London: Elsevier Health Sciences 2007.

¹⁴ Para 4 of the Oath of Lasagna.

¹⁵ See especially D.J. Weatherall, 'The inhumanity of medicine', *British Medical Journal* 1994-309, p. 1671.

¹⁶ J.E. Carey, 'The formal use of the Hippocratic Oath for Medical Students at Commencement Exercises', *Bulletin of the Association of American Medical Colleges* 1928-3 (2), pp. 159-166.

However, after the Second World War oaths became the norm.¹⁷ Nowadays, medical societies indicate that the majority of medical schools administer some form of the oath to students, either upon entering a medical school or at graduation. In many countries including the United States¹⁸, the Netherlands¹⁹, Singapore²⁰, China²¹, Russia²², or Poland²³ the number of students swearing the oath amounts to 100%.

Research by the British Medical Association reveals that this form of affirmation supports physicians' determination to behave with integrity under extraordinary circumstances. This seems especially significant in the contemporary setting where physicians are confronted by major moral challenges, such as the principle of autonomy and the right to self-determination or the principle of informed consent. As a result, the British Medical Association suggests that "all medical schools should incorporate medical ethics into the core curriculum, and that all medical graduates make a commitment, by means of affirmation, to observe an ethical code."²⁴

Yet a number of academics criticise the swearing of any type of medical oath. Engelhardt suggests²⁵ that the postulates and values of the Hippocratic heritage should be limited to the ancient neo-Pythagorean Greek world, due to difficulties in finding universally common values in modern society. Because of pluralism and various understandings of morality in the contemporary culture no agreement on a common ethical standpoint will ever be found. Veatch goes even further, stating with confidence that the Hippocratic ethos as a standard of morality for the medical profession should be rejected entirely. The Hippocratic corpus "is dead"²⁶, because it is too empowering for the physician. His main argument is that the oath encourages paternalism²⁷ by explicitly referring to the phrase "according to my ability and judgment". As a result, a situation arises when "quasi-

¹⁷ For a detailed history of the oath-swearing in Europe and the United States, see: D. C. Smith, 'The Hippocratic Oath and Modern Medicine', *Journal of the History of Medicine and Allied Sciences* 1996-51, pp. 484-500.

¹⁸ R.D. Orr, N. Pang, E.J. Pellegrino, and M. Siegler, 'Use of the Hippocratic Oath: A review of 20th century practice and a content analysis of oaths administered in medical schools in the U.S. and Canada in 1993', *Journal of Clinical Ethics* 1997-8 (4), pp. 377-388. Interestingly, 98% of American students swear a medical oath. Sritharan notices that this is mainly caused by the American tradition of swearing allegiance to the flag, therefore the concept of affirming beliefs is common. K. Sritharan, G. Russell, Z. Fritz, D. Wong, M. Rollin, J. Dunning, P. Morgan, and C. Sheehan, 'Medical oaths and declarations', *British Medical Journal* 2001-323, pp. 1440-1441.

¹⁹ H.E. Westerveld, J.W. Briet, E.S. Houwaart, J.J. Legemaate, J.A. Meerman, E.J. Breetvelt, and E. van der Wall, 'Dutch Medical Oath', *Netherlands Journal of Medicine* 2005-63 (9), pp. 368-372.

²⁰ According to the Singapore Medical Council, since 1995 every doctor admitted as a fully registered practitioner swears the Singapore Medical Council's Physician's Pledge.

²¹ P.C. Leung, *A comprehensive guide to Chinese medicine*, New York: World Scientific 2003.

²² 'The Promise of Russian Physicians' has been jointly approved in 1992 by the Minister of Health and the Ministry of Science, Education and Technology. It replaced the 'The Oath of the Soviet Physicians' which possessed "a decidedly non-Hippocratic character", see: R.M. Veatch, *Cross cultural perspectives in medical ethics*, Boston: Jones & Bartlett Learning 2000; and: P.D. Tishchenko, 'Resurrection of the Hippocratic Oath in Russia', *Cambridge Quarterly of Healthcare Ethics* 1994-3 (1), pp. 53-56.

²³ The post-communist 'Promise of Medicine' sworn by every medical student is included in the Polish "Code of Medical Ethics" adopted by the National Congress of Physicians in 1991. See: T. Biesaga, 'Kodeks etyki lekarskiej', *Medycyna Praktyczna* 2006-9, p. 20.

²⁴ British Medical Association, *Medicine Betrayed: Participation of Doctors in Human Rights Abuses*, London: Zed Books 1992.

²⁵ J.T. Engelhardt, *The foundation of bioethics*, Oxford: Oxford University Press 1986.

²⁶ R.M. Veatch, 'The Hippocratic Ethic Is Dead', *New Physician* 1988-48, pp. 41-42.

²⁷ Also known as 'parentalism'. For more information about medical paternalism, see: R.J. Devettere, *Practical Decision Making in Health Care Ethics: Cases and Concepts*, Washington: Georgetown University Press 2009; H. Hayry, *The Limits of Medical Paternalism*, London: Routledge 2002.

children are seeking help from their medical quasi-parents"²⁸, because physicians claim to know what is best for the patients and therefore assume an ethical obligation to rely on that knowledge. Yet despite the professionalisation of medicine and enormous advancement in medical knowledge and technology, "even in the ideal case, physicians generally have no basis for knowing what would benefit their patients."²⁹ Veatch strongly opposes treating patients in the same manner as the Hippocratic ethic suggests, which he calls "weak, debilitated, childlike victim, incapable of functioning as a real moral agent."³⁰ An unquestioned subordination is erroneous, because it ignores the concept of patient's autonomy.

Although medical oaths differ to some extent and their literal meaning has changed over time, their general meaning, significance and ideals remained the same. The oaths refer to a number of ethical standards in medicine centred around *primum non nocere*³¹ ("first, do not harm").³² They do not only serve as promises to act in the best interest of the patient, but also indicate that the medical profession is a part of the heritage of civilisation. In the 21st century physicians are confronted by numerous challenges, so the need for a strong moral and ethical conduct may be stronger than ever before.

II. The Concept of Informed Consent

The concept of informed consent is not an entirely modern dilemma.³³ In the period between the Middle Ages and the 20th century, however, the physician was placed in an unrestricted godlike role. His knowledge was absolute and the profession was seen as 'learned'. The relationship between patient and doctor was therefore truly paternalistic, as it was the non-educated patient who sought the help of the respected physician, whose task was to provide the best treatment available. The decisions on treatment were complied to silently, mainly due to the fact that individuals perceived themselves as members of fixed classes rather than separate persons, and because of the hierarchy people were accustomed to obeying.³⁴

The doctrine of informed consent acquired its momentum in the aftermath of the Second World War and has grown immensely in the 20th century. After the Nuremberg Trials, the Nuremberg Code was formulated, which explicitly stated that the voluntary consent of a patient is crucial (Article 1). The Code also provided a general set of ethical principles and was used as a model for numerous national medical codes. Consequently, a new physician's duty to

²⁸ Term introduced by American sociologist Talcott Parson.

²⁹ R.M. Veatch, *Patient, Heal Thyself: How the New Medicine Puts the Patient in Charge*, New York: Oxford University Press 2008.

³⁰ R.M. Veatch, *The patient as partner: a theory of human-experimentations ethics*, Bloomington: Indiana University Press 1987, p. 4.

³¹ Also referred to as 'primum nil nocere'.

³² Although this phrase cannot be attributed to the Hippocratic Oath itself, the Oath undoubtedly acknowledges this principle of non-maleficence. Hippocrates used a similar statement in *Of the Epidemics* to describe the responsibilities of the physician: "the physician must be able to tell the antecedents, know the present, and foretell the future; must mediate these things, and have two special objects in view with regard to disease, namely, to do good or to do no harm", Hippocrates, 'Of the Epidemics', Book I, Section II:5.

³³ Ancient Greek and Byzantine historical sources indicate that it was already addressed by philosophers and physicians in antique time, for more information see: P. Dalla-Vorgia, J. Lascaratos, P. Skiadas, and T. Garanis-Papadatos, 'Is consent in medicine a concept only of modern times?', *Journal of Medical Ethics* 2001-27, pp. 59-61.

³⁴ For more details, see: R. K. French, *Medicine before science: the rational and learned doctor from the Middle Ages to the Enlightenment*, Cambridge: Cambridge University Press 2003; and: R. Kaba, and P. Sooriakumaran, 'The evolution of doctor-patient relationship', *International Journal of Surgery* 2007-5 (1), pp. 57-65.

reveal the necessary information to a patient and, subsequently, to obtain his consent for treatment evolved worldwide. Moreover, application of the European Convention of Human Rights³⁵ into national legislation considerably increased the significance of patient's consent. Polani indicates that the traditional one-to-one relationship between patient and doctor ceased in the middle of the 20th century, because of the involvement of larger medical teams in the management of complex conditions.³⁶ Additionally, patient expectations were raised as a result of medical advancement and increased healthcare complexity, with increased levels of specialisations and sub-specialisations. Informed consent therefore can be perceived as a new moral standard which emerged as a direct result of societal changes. This new patient-centred approach is in direct contrast to the old disease-centred one, as now "the physician tries to enter the patient's world, to see the illness through the patient's eyes."³⁷

There is no direct reference to patient consent in the Hippocratic Oath, thus a number of modern medical ethicists describe the patient-physician relationship as purely paternalistic. This approach, however, appears to oversimplify the issue. In *Epidemics*³⁸ Hippocrates stated that the patient must cooperate with the physician in order to combat the disease effectively. Dalla-Vorgia indicates that this certainly does imply that the patient had to obey blindly all the physician's orders, but had to be sufficiently informed and give his consent for the treatment.³⁹ Research into the social structure of Greek society supports this view. Miles points out that "the image of physicians haughtily dictating orders to Greek freemen seems at odds with the egalitarianism of Greek culture."⁴⁰ Hippocrates advised the disclosure of a prognosis to the patient and his family after consent was given: "any man who is intelligent must, on considering that health is of the utmost value to human beings, have the personal understanding necessary to help himself in diseases, and be able to understand and to judge what physicians say and what they administer to his body, being versed in each of these matters to a degree reasonable for a layman."⁴¹ Disclosure was not only ethical towards the patient, but also benefited the physician himself: "if a physician is able to tell his patients (...) not only about their past and present symptoms, but also tell them what is going to happen as well as to fill in the details they have omitted, he will increase his reputation (...) and people will have no qualms in putting themselves under his care."⁴² Although there is no direct reference to a patient's informed consent in the Hippocratic Oath itself, Hippocrates concludes in other works that the relationship between physician and patient rests primarily on honesty.

The same holds true in the Declaration of Geneva and the Oath of Lasagna. Although these oaths do not invoke the concept of informed consent directly⁴³, both contain references to acting in the patient's best interest at

³⁵ Formally known as the *Convention for the Protection of Human Rights and Fundamental Freedoms*.

³⁶ P.E. Polani, 'The development of the concepts and practice of patient consent', in: G.R. Dunstan, M.J. Sellar (eds), *Consent in medicine*, London: King's Fund Publishing Office 1983, p.99.

³⁷ J.H. Levenstein, J.B. Brown, W.W. Weston, M. Stewart, M.C. McCracken, and I. McWhinney, *Patient-centred Clinical Interviewing. Communication with Medical Patients*, Newbury: Sage Publications 1989.

³⁸ W.H.S. Jones, *Hippocrates, vol II.*, London: Heinemann 1923.

³⁹ *Ibid*, p. 60.

⁴⁰ S.H. Miles, 'Hippocrates and informed consent', *Lancet* 2009-374 (9698), pp. 1322-1323.

⁴¹ P. Potter (trans.) *Affections, in Hippocrates*, 1988-5 (7), p. 268-269.

⁴² J. Chadwick, *Hippocratic Writings*, Penguin: Harmondsworth, 1984, p. 170.

⁴³ The Declaration of Helsinki, developed by the World Medical Association, also formulates a set of ethical rules concerning informed consent, referring to medical research. Article II.1 states

all times. The Declaration of Geneva affirms that physicians "will maintain the utmost respect for human life"⁴⁴ and make "the health of patient (their) first consideration."⁴⁵ The Oath of Lasagna declares that physicians "above all, must not play at God."⁴⁶ The explicit reference to respect serves as the general recognition of a person as an autonomous, free individual, who is empowered to make free decisions. It also refers to an appreciation of the right to choose of patients being persons – namely that a high degree of the patient's autonomy needs to be preserved by sharing knowledge and skills. McCullough states that these oaths command "respect for autonomy in this setting nearly absolute".⁴⁷

There is no single, widely accepted definition of informed consent. It varies not only across states and jurisdictions, but also in different settings, such as ethics, law, medicine and philosophy. In *Allan v New Mount Sinai Hospital*⁴⁸ informed consent was described as "the duty of completely disclosing information to a patient regarding medical treatment before it is undertaken". In the leading American case *Planned Parenthood of Central Missouri v Danforth*⁴⁹, the US Supreme Court described it as: "giving of information to the patient as to just what would be done and as to its consequences". On the other hand, medical ethicists defining informed consent may take into consideration different components, such as information, voluntariness, and competence⁵⁰; accuracy, adequate information, and lack of coercion followed by a valid consent given⁵¹; or disclosure of information, competency, understanding, voluntariness and decision-making.⁵² One can observe therefore that there are certain elements of definition of informed consent which may differ in various settings.⁵³ For the purposes of this paper, however, a broad and general definition of informed consent will be accepted as such consent which refers to a patient's right to receive sufficient information by the physician in order to allow the patient decide whether or not to consent to medical treatment.

III. Refusal of Medical Treatment on Religious Grounds

Currently, one of the most controversial issues with regard to the relationship between medical oaths and law occurs when a patient refuses blood transfusion on religious grounds. The most visible example would be Jehovah's Witnesses, a conservative Christian denomination, which favours literal interpretation of the Bible regarding blood as sacred. Jehovah's Witnesses believe that God prohibited transfusions of whole blood or its primary components, i.e. white cells, red cells, platelets and plasma.⁵⁴

that physicians are required to obtain consent "if at all possible" and "research (is) allowed without consent where a proxy consent, such as a legal guardian, was available".

⁴⁴ At para 9 of the Declaration of Geneva.

⁴⁵ At para 4 of the Declaration of Geneva.

⁴⁶ At para 6 of the Declaration of Geneva.

⁴⁷ L.B. McCullough and S. Wear, 'Respect for autonomy and medical paternalism reconsidered', *Theoretical Medicine* 1985-6, pp. 295-308.

⁴⁸ [1980] 28 Ont (2d) 356.

⁴⁹ 428 U.S. 52 (1976).

⁵⁰ A.R. Dyer and S. Bloch, 'Informed consent and psychiatric patient', *Journal of Medical Ethics* 1987-13 (1), pp. 12-16.

⁵¹ G.R. Gillet, 'Informed consent and moral integrity', *Journal of Medical Ethics* 1989-15 (3), pp. 117-123.

⁵² C.L. Sprung and B.J. Winick, 'Informed consent in theory and practice: legal and medical perspectives on the informed consent doctrine and a proposed reconceptualization', *Critical Care Medicine* 1989-17 (12), pp. 1346-1354.

⁵³ This topic however exceeds the scope of this paper. For a detailed study of various definitions of informed consent, see for example: H. Kilpi-Leino, *Patient's Autonomy, privacy and informed consent*, Amsterdam: IOS Press 2000, Chapter 2.

⁵⁴ They rely on three biblical passages: "but you must not eat meat that has its lifeblood still in

Consequently, they believe that by accepting blood transfusions they are deprived of the eligibility to enter paradise. The Watchtower Society, the official legal organisation administrating and developing doctrines for the Jehovah's Witnesses,⁵⁵ refers to blood transfusions as a fundamental religious stand that Jehovah's Witnesses must observe. Those who respect life "as a gift from God do not try to sustain life by taking in blood"⁵⁶, even "in an emergency"⁵⁷; this may be the risk of disability or death.

The policy on refusal of blood transfusion was introduced in 1945, and since 1961 the Watchtower Society has enforced an absolute zero-tolerance excommunication⁵⁸ approach to members who wilfully accept blood transfusion. Even though in 2000 the sect introduced new guidelines towards blood transfusion⁵⁹ establishing that Witnesses who did not comply with the policy regarding transfusions are not expelled from the organisation, the practice indicates that such a member "revokes his own membership by his own actions."⁶⁰ The ultimate result remains therefore equivalent; this member is no longer part of the Church. Elder indicates that such persons are treated as outcasts being "isolated from normal associations with family and lifelong friends who are members – not even being greeted by them if they pass you on the street."⁶¹ Consequently, the policy acts as a powerful deterrent against those who may want to contradict the official Watchtower Society's teachings and authority.⁶²

It is difficult to assess a precise number of Witnesses who voluntarily died or sacrificed the lives of their children by following the Watchtower Society's policy, but the number is undoubtedly significant. Doctor Reed, former Witness and currently a widely recognised authority on the sect,⁶³ estimates that the figure may amount to approximately 9000 every year. In 2001, a study was conducted by Dr. Carl Saphier at Mount Sinai School of Medicine in New York with the purpose of determining the rates of obstetric haemorrhage⁶⁴ and maternal mortality in women Jehovah's Witnesses.⁶⁵ Research indicated a death rate of 521 deaths per 100,000 live births, which constitutes a number approximately 44 times higher than the general US population. A similar research⁶⁶ concluded that "the death rate in this group

it", Genesis 9:4; "any Israelite or any alien living among them who eats any blood—I will set my face against that person who eats blood and will cut him off from his people", Leviticus 17:10; and "you are to abstain from food sacrificed to idols, from blood, from the meat of strangled animals and from sexual immorality (...)", Acts 15:29.

⁵⁵Although it is beyond the scope of this study to discuss in details the Jehovah's Witnesses doctrine, a comprehensive overview is presented in J.M. Penton, *Apocalypse delayed: the story of Jehovah's Witnesses*, Toronto: University of Toronto Press 1997.

⁵⁶"Be Guided by the Living God", *The Watchtower*, June 15, 2004, p. 22 (accessed 07.10.2010).

⁵⁷"Godly Respect for Blood", *The Watchtower*, 1 September 1986, p. 25 (accessed 07.10.2010).

⁵⁸I.e. expelling.

⁵⁹The Watchtower, 15 June 2000, pp. 29-31. (accessed 07.10.2010).

⁶⁰O. Muramoto, 'Bioethical aspects of the recent changes in the policy of refusal of blood by Jehovah's Witnesses', *British Medical Journal*, 2001-322.

⁶¹L. Elder, 'Why some Jehovah's Witnesses accept blood and conscientiously reject official Watchtower Society blood policy', *Journal of Medical Ethics* (26) 2000, pp. 375-380.

⁶²King holds an opinion that to a Jehovah's Witness the Watchtower Society is more authoritative in its teachings than the Bible. See: R. King, *Jehovah Himself Has Become King*, London: Authorhouse 2005. Moreover, Rodriguez points out that "on the average, they [Jehovah's Witnesses] will read approximately 1,000 pages of the Watchtower publications to one page of the Bible", see: D. Rodriguez, *The Watchtower's Coming Crisis*, Cucamonga: Chick Publications 2009, p. 48.

⁶³D.A. Reed, *Blood on the altar: confessions of a Jehovah's Witness minister*, Amherst: Prometheus Books 1996.

⁶⁴Therefore heavy bleeding during pregnancy.

⁶⁵See: A.K. Singla, 'Are women who are Jehovah's Witnesses at risk of maternal death', *American Journal of Obstetrics & Gynecology* 2001-185, pp. 893-895.

⁶⁶British BMC Pregnancy and Childbirth Journal, 'Confidential Enquiry into Maternal Deaths (CEMD) Report 2000', at: <http://www.religioustolerance.org/witness11.htm>. (12.10.2010)

(i.e. Jehovah's Witnesses) was 1 per 1,000 maternities compared with an expected incidence of less than 1 per 100,000 maternities.⁶⁷ Even if these reports are not entirely accurate⁶⁸, in May 1994, Watchtower Society declared that: "in former times *thousands* of youths died for putting God first. They are still doing it, only today the drama is played out in hospitals and courtrooms, with blood transfusions the issue."⁶⁹

Contemporary medical practice universally accepts the philosophical principle of patient's autonomy, or personal self-determination, while negating the paternalistic approach. The patient is therefore considered as fully capable of providing or withholding his consent to the chosen treatment. This policy is also favoured by the domestic judicial systems in the western world with regard to refusal of blood transfusion by Jehovah's Witnesses. There are two aspects of the problem, that is refusal of blood transfusions for Witnesses themselves and refusal for their children.

If a conflict between parents and physicians occurs, courts unanimously agree that the child's interest is predominant and blood transfusion should be provided. Although parents' rights are recognised, they are not absolute, and in special circumstances may be restricted. In the well-known American case *Prince v Massachusetts*⁷⁰ relating to permitting a child to work contrary to child labour laws, the US Supreme Court stated that "parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children."⁷¹ In practice, a hospital will ask the court to invoke its power of *parens patriae*⁷² by asking for an order permitting administration of medically necessary blood transfusions over the parent's objections. This approach is favoured by various national legislation, and reported case law.⁷³ However, in the majority of cases concerning adult competent and conscious Jehovah's Witnesses, the principle of informed consent prevails even if the decision is not medically sound and such refusal leads to death of the patient. A physician has to remain neutral; he is not authorised to decide on behalf of the patient. Their right to refuse blood transfusion emanates from either the statutory law⁷⁴ or the common law.⁷⁵

⁶⁷ Summarizing these two reports the death rate of Jehova's Witnesses is 70 times higher.

⁶⁸ Its opponents claim that the sample of patients examined was too low in order to assume a general mortality rate of Jehovah's Witness women giving birth.

⁶⁹ Awake!, 22 May 1994, p. 2. Awake! is a monthly door-to-door distributed magazine published by Jehovah's Witnesses.

⁷⁰ (1944) 321 US 158.

⁷¹ *Ibid*, p.170.

⁷² Latin for 'power of the nation', a doctrine that empowers the state to be the guardian to those who are unable to protect themselves or look after themselves legally.

⁷³ See for example: *Custody of a Minor* 375 Mass. 733, 379 N.E.2d 1053 (1978), *Jacobson v Massachusetts* 197 U.S. 11 (1905); *Re O (A Minor) (Medical Treatment)* [1993] 1 FCR 925, [1993] 2 FLR 149, 53; *Re S (A Minor) (Medical Treatment)* [1993] 1 FLR 376, 54; *Re R (A Minor) (Blood Transfusion)* [1993] 2 FCR 544. For further discussion on this topic, see: K.M. Lomond, 'An adult patient's right to refuse medical treatment for religious reasons: the limitations imposed by parenthood', *Journal of Family Law* 1992-1993-31 (3), pp. 665-683; and J. M. Jarvis, 'Parent, Child, State, and the Limits on the Parent's Entitlement to Dictate a Child's Medical Treatment on the Basis of the Religion', *Journal of Contemporary Legal Issues* 2007-16, pp. 79-125.

⁷⁴ E.g. California Health and Safety Code § 7186, New York Public Health Law § 2504, § 2805(d); British Human Rights Act 1998 which incorporates into domestic law rights contained in the European Convention on Human Rights; in Victoria, Australia, Refusal of Medical Treatment Act 1988, in South Australia Natural Death Act 1983.

⁷⁵ See, *Hoffmann v Austria* (Case No 15/1992/360/434) [1993] ECHR 25; 12875/87; *Fitzpatrick & Anor v K & Anor* [2008] IEHC104; *Fosmire v Nicoleau* 551 N.Y.S.2d 876 N.Y.,1990.; In *Re Brown* 478 So.2d 1033 Miss.,1985; *Wons v Public Health Trust of Dade County* 541 So.2d 96 Fla.,1989.; *Shorter v Drury* 695 P.2d 116; *Matter of Dubreuil* 629 So.2d 819; In *Re E.G.* 549 N.E.2d 322 Ill.,1989; *Norwood Hosital. v Munoz* 564 N.E.2d 1017 Mass.,1991.; *St. Mary's Hospital v Ramsey* 465 So.2d 666 Fla.App. 4 Dist.,1985.

A breach of the physician's obligation to obtain informed consent prior to blood transfusion will give rise to his potential tortious liability, resulting in either battery or negligence. In the landmark American decision *Schloendorff v Society of New York Hospital*⁷⁶ Justice Cardozo stated that "a surgeon who performs an operation without the patient's consent commits an assault for which he is liable in damages." Any non-consensual touching may result to battery, and importantly, it does not need to harm the patient.⁷⁷ A physician can commit battery even when he is supposedly acting in the best interest of the patient.⁷⁸ In such a case, the practitioner can be sued for damages, regardless of the effect of his conduct on the patient's health. If the patient claims that alternatives to the treatment such as bloodless surgery (which is accepted by the Jehovah's Witnesses' blood doctrine), have not been sufficiently presented to him, the physician's liability will lie in negligence. In rare situations, treatment of a patient who has not consented may even lead to criminal liability.⁷⁹

IV. The Ethical Problem and a Possible Solution

In the majority of cases, physicians follow the legal principles and respect patient's decision to refuse medical treatment, and consequently contravene the *primum non nocere* principle enshrined in medical oaths. The dilemma is further enhanced by the fact that Jehovah's Witness patients who refuse transfusions are under substantial influence of the Watchtower Society's doctrine and fear the possibility of being disfellowshipped. It is a common procedure that before medical treatment, Jehovah's Witnesses fully consult with the liaison committees.⁸⁰ According to the Watchtower Society, such liaison committees "support the Witnesses in their refusal to receive blood, to clear away misunderstandings on the part of doctors and hospitals, and to create a more cooperative spirit between medical institutions and Witness patients."⁸¹ In reality, however, the committees' stance is non-negotiable and ultimate. One can therefore argue that Jehovah's Witnesses patients not only act irrationally, but are also coerced, therefore their decisions are not entirely autonomous. This statement is supported by the examples when a patient reversed his earlier decision of allowing blood transfusion after conducting consultations with a liaison committee.⁸²

There are numerous ethical conceptions on how to combat this problem while trying not to deviate from the moral standard attached to medical oaths. The proposals range from strictly adhering to the principle of *primum non nocere* and, as a result, overriding competent refusals by special 'ethics committees' if the treatment is "clearly beneficial"⁸³, to the idea of 'shared

⁷⁶ 211 N.Y. 125, 105 N.E. 92 (1914).

⁷⁷ Sanbar indicates that there are examples of patients who successfully sued healthcare providers on the basis of battery even when no harm occurred to the patient, see: S.S. Sanbar, *Legal Medicine*, Philadelphia: Elsevier Health Sciences, 2004, p.344.

⁷⁸ See for example: *Devi v West Midlands RHA* [1980] C.L.Y. 687.

⁷⁹ In *Re F (Mental Patient: Sterilisation)* [1990] 2 AC 1 it was stated that "it is a civil wrong, and may be a crime, to impose medical treatment on a conscious adult of sound mind without his or her consent".

⁸⁰ There is a network of 800 liaison committees internationally.

⁸¹ Hospital Information Services at the Watch Tower Society's world headquarters, *Jehovah's Witnesses and the Medical Profession Cooperate*, http://www.watchtower.org/e/19931122/article_01.htm (04.10.2010)

⁸² See: C. Junkerman, 'Jehovah's Witnesses and the refusal of blood', *Journal of Clinical Ethics* 1990-1, pp. 167-168; K. Lawry, J. Slomka and J. Goldfarb, 'What went wrong: multiple perspectives on an adolescent's decision to refuse blood transfusion', *Clinical Pediatrics* 1996-35, pp. 317-321.

⁸³ S. Glick, 'The morality of coercion', *Journal of Medical Ethics* 1999-25, pp. 469-472. This approach is

decision-making', i.e. providing the medical facts to the patient who makes the final decision as to what is best according to his values. It appears however, that there is a sensible solution that reaches a compromise between respecting a patient's autonomy and upholding the moral standard enshrined in medical oaths. This approach, advocated by a number of ethicists⁸⁴, is known as 'rational non-interventional paternalism'. It encourages a bilateral in-depth discussion between a patient and physician in order to encourage a rational and autonomous decision by the patient.⁸⁵ In order to achieve this, there are certain steps which need to be taken by physician.

Firstly, the status of a Jehovah's Witness patient needs to be verified. In *Re T (adult: refusal of treatment)*⁸⁶ a patient, referred to as Ms T., was brought up by her Jehovah's Witness mother and although she was not a Witness by baptism or otherwise, she retained some of the organisation's beliefs. When she arrived at hospital being critically ill, Ms T. was referred to by her mother as "a fervent Jehovah's Witness". Subsequently, her membership of the organisation was officially denied by the Watchtower Society.⁸⁷ Moreover, there is a considerable minority of Jehovah's Witnesses that disagrees with the official Watchtower Society policy on blood transfusion. Research⁸⁸ indicated that 12% of Jehovah's Witnesses are willing to accept blood transfusion. The *Associated Jehovah's Witnesses for Reform on Blood* is an organisation that aims to promote reform of the Watchtower's policy "so that each Jehovah's Witness can have a free and informed choice regarding their health care - without fear of control or sanctions from the Watchtower Society."⁸⁹ These examples indicate that the status of a Jehovah's Witness patient should be verified solely by the patient himself. Statements made by his family or close friends should not be accepted as an absolute truth.

The second step which physicians must take is an informal, but confidential discussion about the refusal of blood transfusion. It is crucial that such a consultation is limited to the Jehovah's Witness patient and the physician, excluding any presence or advice from a liaison committee or family members in order to relieve the patient from any pressure and encourage him to reach a rational and autonomous decision. Additionally, the patient should be informed about the doctor-patient confidentiality. Although it is a legal concept, it needs to be remembered that it also derives directly from medical oaths.⁹⁰ As a result, any patient's decision will not be revealed to his family member or the sect. The physician should then provide the patient with comprehensive and credible information regarding further treatment. Importantly, it is not only the possibility of death that needs to be

applied in Israel under the Patient's Rights Act of 1996. For further information, see: M.L. Gross, 'Treating competent patients by force: the limits and lessons of Israel's Patient's Rights Act', *Journal of Medical Ethics* 2005-31, pp. 29-34.

⁸⁴ Such as Savulescu and Muramoto.

⁸⁵ Such an approach would not apply to emergency cases.

⁸⁶ [1992] 4 All ER 649.

⁸⁷ D. Dyer, 'Court says doctors were right to treat Jehovah's Witness', *British Medical Journal*, 1989 -305 (6848), p. 272.

⁸⁸ L. Findley and P. Redstone, 'Blood transfusion in adult Jehovah's Witnesses. A case study of one congregation', *Archives of Internal Medicine*, 1982-142 (3), pp. 606-607.

⁸⁹ <http://www.ajwrb.org/about.shtml>. (06.10.2010).

⁹⁰ Para. 5 of the Hippocratic Oath: "Whatever, in connection with my professional practice or not in connection with it, I see or hear in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret." Para 5. of the Declaration of Geneva: "I will respect the secrets confided in me, even after the patient has died." Para 6. of the Oath of Lasagna: "I will respect the privacy of my patients, for their problems are not disclosed to me that the world may know."

mentioned, but also the likelihood of prolonged suffering or disability which may occur as the direct result of refusal to transfuse blood. Muramoto suggests⁹¹ that the physician should question the patient about their basis for the refusal, while indicating the unreasonableness and inconsistency of the doctrine. One of the arguments raised may be that the passage in *Leviticus 17:12*, the major doctrinal basis for the refusal, refers to animal and not human blood. Moreover, it should be mentioned that the Bible forbids consumption and not transfusing blood, which remains a considerable difference on the patient's system. Food is decomposed to proteins, carbohydrates, lipids, and amino acids which nourish body's tissues. Conversely, when blood is transfused it does not serve as nourishment, but it remains intact and carries food and oxygen to cells. The physician should also mention the significant change in the Watchtower Society's policy towards organ transplants. In 1967, the Society stated that: "those who submit to such operations are thus living off the flesh of another human. That is cannibalistic. However, in allowing man to eat animal flesh Jehovah God did not grant permission for humans to try to perpetuate their lives by cannibalistically taking into their bodies human flesh, whether chewed or in the form of whole organs or body parts taken from others."⁹² In 1980, however, the policy was changed: "while the Bible specifically forbids consuming blood, there is no Biblical command pointedly forbidding the taking in of other human tissue. (...) The congregation judicial committee would not take disciplinary action if someone accepted an organ transplant."⁹³ The physician should remind the patient that the previous Watchtower Society doctrine resulted in deaths and disabilities. Furthermore, the patient should be notified that in the future the official stance regarding blood transfusion may also be changed. Consequently, it may provoke him to re-evaluate his standpoint.⁹⁴

The profound difference between paternalism and rational non-interventional paternalism arises from the means used. The patient is not compelled to adopt the demands of the physician, but is presented with a rational argument that his beliefs are erroneous. The position of a physician therefore changes from a mere fact-provider to the provider of facts together with arguments. Importantly, if this rational non-interventional paternalism is adopted, there is a possibility that a patient will reconsider their decision to refuse medical treatment.⁹⁵ It also ensures that the principle of *primum non nocere* is upheld.

Conclusion

The medical profession has maintained ethical standards for more than four millennia. A universal principle upon which the patient-physician relationship has been based on is *primum non nocere*, meaning 'first, do no harm'. Medical oaths refer to the general recognition of the patient as an

⁹¹ O. Muramoto, 'Bioethics of the refusal of blood by Jehovah's Witnesses: part 2. A novel approach based on rational non-interventional paternalism', *Journal of Medical Ethics* 1998-24, pp. 295-301.

⁹² *The Watchtower*, 15 November 1967, p.702.

⁹³ *The Watchtower*, 15 March 1980, p. 31.

⁹⁴ Other possible questions can be found in the Appendix to Muramoto's article and on the official website of the Associated Jehovah's Witnesses for Reform on Blood, <http://www.ajwrb.org/index.shtml>. (accessed 07.10.2010).

⁹⁵ See: C. Granger, 'Managing a Jehovah's Witness who agrees to blood transfusion', *British Medical Journal* 1994-309, p. 612; C. Junkerman, 'Jehovah's Witnesses and the refusal of blood', *Journal of Clinical Ethics* 1990-1, pp. 167-168; M. Kerstein, 'Discussion: transfusion guidelines for cardiovascular surgery: lessons learned from operations on Jehovah's Witnesses', *Journal of Vascular Surgery* 1992-16, p. 829.

autonomous individual with certain rights, who is empowered to make free decisions regarding its own medical treatment. As a result, physicians are facing a moral dilemma. Without an attempt to solve it, the medical profession may be discredited and public support for medical care withdrawn. The adoption of the rational non-interventional paternalist approach serves as an optimal solution to this problem, because firstly, it is highly beneficial towards the patient by preserving his autonomy and secondly, it fulfils the moral duty sworn in medical oaths.

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