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ARTÍCULO

Bioethics and the Law in Mexico

Bioética y el derecho en México

Bioètica i dret a Mèxic

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Abstract

The results of an empirical study (Hall, 2017) show that, taken as a group, physicians in Mexico do not know what is legal and what is not legal with respect to certain areas of clinical practice. A number of legal cases are cited showing the ways in which the legal system is ineffective with respect to providing guidance on bioethical issues. We conclude that physicians in Mexico do not know what is legal and what is illegal with respect to bioethics because they cannot know (the law is unclear) and because they do not need to know (there is no effective legal precedent or enforcement). We suggest that the way forward must be through institutional policies establishing standards that depend only upon the traditional contract for medical care.
Keywords: bioethics; law; Mexico; palliative care.

Resumen

Los resultados de un estudio empírico (Hall, 2017) muestran que, tomados como grupo, los médicos en México no saben qué es legal y qué no lo es con respecto a ciertas áreas de la práctica clínica. Se citan varios casos legales que muestran las formas en que el sistema legal es inefectivo con respecto a proporcionar orientación sobre cuestiones bioéticas. Concluimos que los médicos en México no saben qué es legal porque no pueden saberlo (la ley no es clara) y porque no necesitan saberlo (no existe un sistema legal efectivo). Sugerimos que el camino a seguir debe ser a través de políticas institucionales que establezcan estándares que dependan únicamente del contrato tradicional para la atención médica.
Palabras clave: bioética; derecho; México; cuidados paliativos.

Resum

Els resultats d'un estudi empíric (Hall, 2017) mostren que, considerats com a grup, els metges a Mèxic no saben què és legal i què no ho és pel que fa a certes àrees de la pràctica clínica. Se citen diversos casos legals que mostren les formes en què el sistema legal és inefectiu pel que fa a proporcionar orientació sobre qüestions bioètiques. Concloem que els metges a Mèxic no saben què és legal perquè no poden saber-ho (demostrem diverses maneres en què la llei no és clara) i perquè no necessiten saber-ho (el sistema legal no proporciona una aplicació efectiva). Suggerim que el camí a seguir ha de ser a través de polítiques institucionals que estableixin estàndards que depenguin únicament del contracte tradicional per a l'atenció mèdica.
Paraules clau: bioètica; dret, Mèxic; cures pal·liatives.

1. What physicians don't know: An empirical study

The addition of a section on palliative care to the General Health Law of Mexico in 2009 and an official Agreement (ACUERDO) by Consejo de Salubridad General (2014) by which the General Health Council elaborated an Obligatory Comprehensive Management Scheme for Palliative Care have paved the way for the improvement of health care at the end of life. However, in the same year, 2014, the international organization Human Rights Watch published a report confirming a common complaint in Mexico: the article *Mexico: unnecessary suffering at the end of life* documented "the lack of access for many patients to medications to relieve pain and other types of palliative care" (Human Rights Watch, 2014).

Suspecting that there is some confusion about the legality as well as differences of opinion on the ethical acceptability of the different types of medical care, we carried out an empirical study to discover what physicians know about the legality of common practices regarding palliative care and what they really think about the morality of the same practices.

1.1. Materials and methodology

We used a brief survey of a convenience sample of 89 physicians in the modern industrial city of Querétaro. The inclusion criterion was that the respondent was a registered physician with a practice relevant to palliative care. The survey included six brief clinical cases. In each case, we asked about the legality and the ethical acceptability of the practice in question. We present one example directly from our survey; details can be found at http://unidadbioetica.com. Since this group of doctors was not a random sample, we cannot affirm that the results can be statistically generalizable to all doctors of the state –much less to all of Mexico. However, we believe that this convenience sample was appropriate and that the results are representative and relevant to our conclusions.

1.2. Results

Case: The refusal of surgery and a request to remove a ventilator

A patient is dying, a victim of multiple sclerosis. The condition of this lady has deteriorated, to such a degree that she has recently lost total control of her bodily functions and she cannot move at all without help. Unexpectedly and very quickly, the condition of the patient deteriorated and

she was admitted to the hospital. She needed a ventilator to assist her breathing. After using the ventilator for three weeks, the doctor informed the woman that she would soon need a tracheotomy because the nasal tube could not be used for a long time. After considering this procedure, she decided to reject the tracheotomy and she asked the doctor to remove the ventilator.

The questions on the survey all took the same form. The first question was: *"Do you think it is legal to cancel the tracheotomy at the request of the patient?"* 70% of the doctors said it was legal: 30% thought it was not legal (that is, that they would be legally required to order a tracheotomy for this patient).

To the question "*Without taking into account the legality, do you think it is ethically acceptable to comply with the patient's desire to refuse the tracheotomy?"* 75.6% of the doctors told us that it was ethically acceptable; for 24.4% it was not morally acceptable. The conclusion showed that 5 doctors thought it was a morally acceptable option to cancel the tracheotomy at the request of the patient, although they doubted that it was legal.

Using the same case, we then asked the doctors: *"Do you think it is legal to remove the ventilator at the request of the patient?"* 41.1% of doctors thought it was legal, while 58.9% thought that it was not legal. However, to the question *"Do you think it is ethically acceptable to comply with the patient's desire to remove the ventilator?"* The results were almost the reverse: 60% considered this morally acceptable and 40 % thought it was not acceptable. There was difference of 17 physicians who felt that it is ethically acceptable to remove a ventilator at the request of the patient, although they thought that it was probably not legal.

Case: The use of morphine to relieve pain with the risk of accelerating the death of the patient

To the question *"Do you think it is legal to use morphine to relieve pain with a probable risk of accelerating the death of the patient?"* 80% of the physicians' responses were positive, 20% negative. But to the question, *"Do you think it is ethically acceptable to use morphine to relieve pain at the risk of accelerating the death of the patient?"* 94.4% agreed, while 5.6% disagreed. So in this case, 13 doctors thought that this pain management is acceptable, although possibly illegal.

Case: The refusal of antibiotic treatment

With respect to refusing antibiotics, 22.2% thought this was legal and 77.8% thought they would be legally required to administer the antibiotics. By contrast, to the question *"Do you think that*

the rejection of antibiotic treatment by the patient is ethically acceptable?" 61.1% answered yes, while 38.9% said no. Again, there was a significant difference: 39% of the physicians who felt that it is ethically acceptable to refuse antibiotics also thought that this was probably not legal (that is, that they would be required to administer antibiotics).

Case: Refusal of cardiopulmonary resuscitation (CPR)

Of the doctors interviewed, 61.6% said that it is legal to refrain from using cardiopulmonary resuscitation at the request of the patient, while 38.9% said that this was probably not legal. The percentage of physicians who believed that the refusal of resuscitation by the patient was morally acceptable was 87.8% compared to 12.2% who were opposed to this request. So 26% of physicians agreed that the refusal of CPR was morally acceptable although they thought CPR was probably legally mandatory.

Case: Refusal of artificial nutrition and hydration

The results of the question *"Do you think it is legal not to administer artificial nutrition and hydration?"* 22.2% of the doctors interviewed said yes; 77.8% said no. To the question *"Do you think it is ethically acceptable to withhold artificial nutrition and hydration?"* 41.1% said yes and 58.9% said no. Although the percentage of physicians who agreed with the patient's decision to refuse artificial nutrition and hydration was the lowest in this survey, still 17 doctors were morally inclined to respect the wishes of the patient, although they thought that they would have a legal obligation to administer artificial nutrition and hydration.

1.3. Discussion

When we consider the sum of all the answers given by the physicians (89 doctors, who have answered 6 questions each = 534 answers), 49.43% of the requests made by the patients were considered illegal and 50.56% were considered legal. We conclude that, taking these doctors as a group, it is fair to say that they really do not know what is legal and what is not legal.

The treatments exemplified in the survey are all legal in Mexico. In addition to the palliative care provisions of the law (2009), the Mexican Bill of Rights of Patients (December 2001) clearly states that the patient has the right to consent to treatment or to refuse it. (Secretaría de Salud, 2001). Five of these cases involved refusals treatment: the case related to the use of morphine is a medical intervention and this one had the highest approval, both legally and morally.

In all of these cases, there were doctors who thought that these examples of palliative care were ethically acceptable, although they also thought that they were illegal. This is not surprising from a cultural perspective. When moral norms are changing (in this case by societal recognition of the rights of patients), it is reasonable to suspect that the law, or knowledge of the law, lags behind the change in moral opinion.

Finally, we note that the uncertainty of physicians regarding the legality of these examples of palliative care can have important consequences with respect to bioethical decision-making. From the perspective of patients' rights, we can ask: if doctors do not know exactly what is legal and what is not, how do they tell patients what their options are? And if patients are not informed about their options, how can their consent to or refusal of treatment be considered an informed decision? In fact, anecdotally, several doctors told us that physicians usually do not talk to patients about these issues - for example they do not explain the options of using strong doses of morphine which, while relieving pain, reduce the patient's alertness and awareness. Perhaps some patients prefer the relief of their pain and others choose to tolerate more pain to stay alert to interact with their relatives.

We conclude that regarding palliative care, there is a clear uncertainty in the minds of physicians about which treatments and procedures at the end of life are legal and which are not. Many of the doctors surveyed thought that several common palliative care treatments are ethically acceptable but probably illegal. We suggest that due to the uncertainty about the law and the rights of patients to refuse treatment, it is likely that many doctors do not frankly discuss treatment options with their patients. This is contrary to the concept of informed consent.

2. The difficulty of finding legal solutions to bioethical issues in Mexico

Bioethics and law are both social constructs that seek to resolve problems. They are quite different on a theoretical level, but they run in parallel lines with a shared objective of protecting people and promoting human welfare.

The main difference between the law and systems of moral conduct –religious or secular— is that the law is coercive; it is a matter of prohibited or required behavior within a political jurisdiction. Problems that may seem to be purely medical have consequences that transcend individual choice and become social issues that require legal solutions.

Bioethics is much less formal. The philosophical forum of bioethics discussion serves to expose problems, analyze human interests and develop consensus on solutions. Medical advances

that call for social consensus and legal regulation have driven the history of modern bioethics. The absence of moral consensus in society permits individual discretion that leads to conflicts that threaten social solidarity. Legal regulations are intended to avoid such conflict and promote solidarity.

Rodolfo Vázquez (2012), a law professor in Mexico City, argues that in modern democracies the role of the state is not limited to a negative duty of non-intervention; it should rather guide, facilitate, and promote social change to regulate the performance of actions that affect the interests of others. Professor Victor Bulle Goyri (2013), a Constitutional lawyer at the National Autonomous University (UNAM), has pointed out that "... advances in knowledge in the biomedical area... raise bioethical dilemmas that affect current practices... and cannot be left without solutions since they generate expectations in society".

Although in ethics there is no coercive authority, there is in the field of bioethics a body of rational opinion with a considerable degree of coherence that aims at a social consensus that serves not only to resolve existing cases, but also to become a tool with which to develop resolutions of future cases. Consensus in morality ideally is a matter of public debate that includes critical thinking and revision or modification of traditional principles. When not polarized by a contentious political process, consensus in bioethics can develop incrementally. Philosophers, lawyers and politicians turn cultural values social standards (Bulle Goyri, 2013). This is a reiterative process in which law, morality and medicine interact to resolve the ethical dilemmas that are presented in practice. At its best, it produces what John Rawls referred to as a reflective equilibrium.

While in some countries there is a trend toward refinement in the regulation of medical practice and research, in Mexico the problem is that it is more comfortable for legislators to avoid controversial issues and let medical practice develop without legal guidance.

Although in medical circles the law is often seen as an instrument of pressure, coercion and punishment, the problem of not resolving cases in the courts is that no precedent is generated that can serve as a guide for similar cases in the future.

In their book *Bioethics and Law*, Janet L. Dolgin (2013) of Hofstra University in New York, and Lois L. Shepherd, of the University of Virginia School of Medicine, point out that:

> *"In health care, our society has used the law to ask (and answer) questions about what are ethically appropriate behaviors among those who provide, or receive, or pay for health care services. Frequently, the law is a reaction to the ethical wrong-doing in health care. ...The legal resolution in effect becomes a societal consensus statement on ethics, at least for the time being and until the laws are changed."*

This is not the case in Mexico. In other countries, doctors are at risk if they do not know with some certainty what is or is not legal. In Mexico, although doctors as a group are quite unclear about what is legal and what is not, the enforcement of laws supposedly governing bioethical issues is either non-existent or unpredictable.

For example, it is quite possible that an aggressive prosecutor in any state in Mexico could charge a physician —under the criminal code— with abandoning a patient even when the physician is following the plan of palliative care prescribed by the General Health Law. This Law states clearly that the patient has a right to refuse all medical treatment. But if a physician, as in one of our cases, asked the hospital staff not to administer cardio-pulmonary resuscitation because the patient had stated his explicit informed refusal of that treatment, a prosecutor could still argue that the criminal law with regard to abandonment takes precedence and could charge a physician with not applying every treatment possible to save the patient's life. There are no applicable precedent cases that would indicate that the patient's refusal (or lack of informed consent) places any limit on the concept of abandonment.

The penal code for the State of Querétaro says that:

> *A prison sentence of three months to three years and a fine of 50 to 200 times the minimum daily wage will be imposed on the doctor who:*
>
> *I. Having taken charge of the care of an injured party, leaves the person´s treatment without just cause and without giving notice to the corresponding authority;*
>
> *II. …*
>
> *III. Does not seek the consent of the patient or the person who must grant it except in cases of urgency, to perform any surgical operation that by its nature endangers the life of the patient and causes the loss of a member or the failure of a vital function;*
>
> *IV. Performs unnecessary surgery;*
>
> *V. Practices medicine and, without justified reasons, refuses to provide assistance to a person in an obviously urgent situation, endangering the life or health of the person, when the latter, due to the circumstances of the case, could not obtain care from another provider;*
>
> *VI. Leaves without just cause the person whose assistance he or she is in charge…*
>
> (Poder Legislativo, 2009)

Although Mexico has no system of legal precedent, the Federal Judicial Branch has established an electronical database, *Seminario Judicial de la Federación* (Suprema Corte, 2018) that synthesizes the judicial findings and resolutions from 1917 to the present in a compendium. A search of "patient abandonment" found only one citation, a precedent from 2006:

> *PROVISION OF MEDICAL SERVICES. CONTRACTUAL RESPONSIBILITY IN RELATION TO THE OBLIGATION OF DIAGNOSIS AND TREATMENT OF THE PATIENT.*
>
> *Even when the diagnosis is accurate and the disease has been correctly classified, it is possible to distinguish a series of circumstances that can constitute culpable or negligent practice:*
>
> *1. Employment of treatments not properly proven or experimental;*
>
> *2. Excessive prolongation of a treatment without results;*
>
> *3. Persisting in a treatment that worsens the patient's health or causes adverse results;*
>
> *4. Abandonment of the patient during treatment; (…)*

This, however, is only a comment in an isolated case. In Mexico, only when the same criteria are used by the Supreme Court in five similar cases, can this be cited as a "rule" for further cases. In the meantime, it is just an "isolated" orientation and other cases can be resolved in opposition to a decision by the highest court.

The legal situation in Mexico may appear strange to people in countries with common law systems where cases are decided in lower courts by reference to precedent. In common law countries the dialogue between bioethics and law is carried out cumulatively in legislation and court decisions that resolve issues and clarify what is legal and what is not. This occurs only rarely in Mexico, however, because of the absence of an effective principle of *stare decisis* and because bioethical issues simply do not reach courts to be solved.

One can say that in Mexico the parameters established by international consensus on bioethical issues are often included in the General Health Law, regulations and norms and are followed by physicians. The palliative care provisions of the federal law, for example, stipulates what is now considered good clinical practice. The reality, however, is that the situation is so complicated in practice that, except in rare cases, the law does not function as a requisite to facilitate and promote social change is not effective. It can be ignored with impunity.

Bioethics and the law

To be more specific, we find that with respect to bioethical issues, the law in Mexico simply fails in its obligation to give guidance in a number of ways:

Conflict of laws

First, as our study of palliative care issues shows, laws that are intended to give guidance may arguably be in conflict with other laws, such as the criminal code's provision on abandonment, even when a patient clearly refuses treatment. Even if a physician were to be cleared of wrongdoing by a court, an accusation could undermine his or her reputation, and could require a long trial with considerable cost, no matter what the result might be. The common practice may not be an intentional silence that results in medical paternalism, but when there is no legal guidance, the safest course is to not explain the options of accepting or refusing specific treatment to the patient and not to involve the patient or family in medical decisions.

State and federal conflict

Second, laws can be challenged in the courts when they are unclear. The supreme court of the land can nullify a state law without providing a solution to the problem. The state of Tabasco, for example, passed a law on assisted reproductive techniques that established provisions in the Civil Code with respect to surrogate motherhood. The state civil code was reformed in 2016, but because the constitutionality of the reform was questioned by the Attorney General of the Republic through an Action of Unconstitutionality, which argued that the State of Tabasco has invaded the sphere of competence of the Federation, some children who were born after this law was enacted have not yet been registered and do not have birth certificates. The case has not yet been decided and while the Supreme Court deals with this theoretical issue, the children are already here; they are without legal names, without affiliation and without nationality (Redacción Animal Político, 2017). To complicate matters access to information on this case is limited, and public debate is practically useless until a final resolution is made. The issue of surrogacy is thus totally undetermined. It may or may not be regulated by federal law in the future and the federal law itself will not resolve the issue of registering births since birth certificates are subject to the civil codes at the state level.

Absence of law

Another problem for bioethics is the legal doctrine of "pre-juridical freedom" which holds that in the absence of specific regulation, there is no prohibition on behavior. Justifying himself expressly by the absence of rules in Mexican legislation, the American researcher John Zhang working in Guadalajara, developed procedures for in vitro conception by pronuclear transfer —a technique, prohibited in the US, but legal in the United Kingdom— that creates a baby with three different DNA strains (Hamzelou, 2013). Since this procedure is not legally prohibited (nor explicitly permitted) in Mexico is legal.

Mis-application of existing laws

A practical problem is that when there are no specific laws that cover a certain case, prosecutors may attempt to make general laws apply. A physician in Oaxaca, who was quite arguably guilty of malpractice for performing a surgical procedure in a facility that did not have proper capability to deal with an unanticipated outcome, was accused of murder. After a general protest by physicians, bioethicists and legal experts, the trial has been remanded for reconsideration and reassignment (Cortés, 2018).

The lack of precedent

The problems of bioethics and the law in Mexico, furthermore, go to the foundation of the legal system. In a legal system where court decisions provide no precedent for future cases, cases that have been decided by the courts give no guidance to physicians and patients. In one case before the federal Supreme Court, for example, five petitioners were given permission use recreational marijuana. The decision, however, does not legalize marijuana, so until recently there were five people in Mexico for whom recreational use of marijuana is legal –for other people even the medical use of marijuana was still ilegal (Castillo, 2018).

Multiple laws and legal instruments

Another issue that faces the problem of multiple laws and legal documents is the question of who should represent a patient who is not capable of making his or her own decisions. In states where there are advance directive laws a competent patient could presumably name someone to make his or her medical decisions if he or she should become incapacitated. Courts can also appoint legal guardians under various laws, and there is the common cultural presumption that the oldest son would be a person's legal guardian. There is also a cultural norm that “the family” will decide,

but it is not clear exactly who the family includes, and the law provides no quick mechanism for resolving conflicts that arise. In some countries this issue is clarified by a priority list of candidates or an act directing the treating physician to name the best-qualified representative, but this doesn't happened in Mexico.

Ineffective laws

In some states in Mexico, there are laws giving patients a right to express and "advance will", but in most instances this is a complicated document that has to be signed before a government official (a *Notario*) —which may be unaffordable for many people— and the document may have to be registered with the state. Despite more than 10 years of promotion and price reductions, fewer than 1 in 500 Mexicans has a regular legal will. There is no statistical evidence about health care advance directives, but if this is the case with wills that protect inheritance; it is easy to imagine what would generally be the case with health care directives. Three years after enactment of a law authorizing advance directives in the state of Guanajuato, for example, there were fewer than 40 advance directives registered although the state has a population of close to 6 million.

Lack of enforcement

Finally, it can be said that even where laws do exist, in Mexico there is little or no enforcement. A recent study commissioned by the President of the Republic regarding "everyday justice" concluded that in Mexico (López Ayllón, 2015):

- legal processes are long, costly, inflexible or poorly adapted to the circumstances;
- there are numerous obstacles both to access to justice and for the result to contribute to the effective solution of citizens' problems;
- justice is perceived as remote; it is largely incomprehensible to citizens and tends to increase social inequality;
- there is a tendency to privilege the procedural form over the resolution of the conflict;
- people who face conflict very often do not know where to go or how to obtain legal services at low cost.

With respect to bioethics this means that if there is a complaint about medical services, patients have no effective recourse. In the examples used in our survey, patient´s right under the General Health Law to refuse a certain treatment may be simply ignored by a physician. There are government commissions (CONAMED for medical complaints and the Federal and state Human Rights Commissions) but these agencies have no enforcement power. They can affirm that the

patient´s complaint is substantial and in an especially egregious case a commission might say that a doctor acted inappropriately, but these governmental commissions have no real power to do anything about it.

José Ramón Cossío, a former member of the Supreme Court, has said that the only case linked to bioethics in Mexico, that has been taken to the Supreme Court of Justice of the Nation is the so-called "Robles Law" decriminalizing abortion in Mexico City. He argues that it will be difficult for the Court to issue helpful decisions on other cases if the cases continue to be posed only from non-bioethical politically contentious perspectives. He concludes that as long as the Court does not address dilemmas, we will lose the "possibility of transforming the national reality" by using the court as an instrument of social change (Cossio, 2013).

The catalog of problems with bioethics laws in Mexico is long, heterogeneous and complex (López Ayllón, 2015). Physicians do not know what is legal and what is not legal because the laws can arguably conflict (palliative care can be viewed as abandonment), because well intentioned laws can be challenged (surrogacy), because of pre-juridical freedom where there are no laws that apply (pronuclear transfer), because without a system of precedent court decisions apply only to the individuals for whom they are given (recreational marijuana), because legal procedures are too complicated (advance directives) and because there is no effective enforcement (CONAMED). It seems reasonable to conclude that physicians in Mexico do not know what is legal and what is illegal with respect to bioethics not only because of an absence of clarity in the law, but because, since there is little or no enforcement, they do not really need to know.

The problems of bioethics in Mexico are similar to those of many other countries, but in reality, the legal institutions offer no way to attain even a minimum of social consensus or legal enforcement. One cannot discuss legal resolution or legal parameters, without advocating systemic changes that reach way beyond the scope of bioethical issues.

In this legal environment, there are those who are either accustomed to non-regulation or who actually count on there being no legal regulation. And legislators apparently prefer not to consider legislation that would be more specific on bioethical issues because some people are likely to disagree. In the meantime, daily issues like informed consent, patients´ rights to medical information, malpractice, withdrawing life support, decision-making for incapacitated people and some aspects of medical research are left without clarification or legal enforcement.

The failure of Mexican law with respect to bioethics is only one aspect of the failure of the Mexican legal system generally. According to a report cited in the Mexican Daily News "the probability that a crime will be reported and solved is only 1.14%" (Mexican Daily News, 2018) . Based on the United Nations definition of impunity, which includes factors of indictment,

detention, prosecution and appropriate penalties, in a study of 69 countries for which relevant data are available, Mexico ranks fifth on the Global Index of Impunity (Le Clercq, 2018). The World Justice Project Rule of Law Index lists Mexico as ranking 92nd out of 113 countries surveyed, just ahead of Venezuela in effectiveness (World Justice Project, 2016). It is not reasonable, therefore, to expect that the absence of legal guidance and enforcement in the rather new and indeed very limited field of bioethics will provoke reform in a system marked by such a high level of civil and criminal impunity in general.

The government and the judicial order have not fulfilled the roll of guiding, facilitating, and promoting social change that Rodolfo Vázquez pointed out. At present, initiatives for the development of appropriate guidance for bioethics in general, and for the ethics of palliative care in particular, will have to come from other sectors of the civil society.

3. The law as good advice: Institutional policies and practices as a way forward

One inconsistency and paradox in the legal system in Mexico leads us to believe that there is a way out of this problem. To elaborate this more fully would require another article, but we noted earlier that the problem in Mexico is not always the absence of guidance in the General Health law and federal regulations. Remarkably, if we just focus on palliative care as one of the most recent developments in bioethics, the law in Mexico presents a rather complete regimen of guidance. This reform is found in the General Health Law itself amendments of 2009, supplemented by the Regulations issued by the Secretary of Health, various Norms developed by governmental agencies and even in a detailed (85 page) federal Guide to clinical practice. It includes a bill of rights of palliative care patients, requirements of informed consent for treatment that patients consider disproportionate to any benefit in their condition, responsibilities of physicians and hospitals to offer plans of palliative care and mechanisms for advance directives, the appointment of surrogate decision-makers and much more. This set of laws and regulations shows that there is indeed a broad social consensus on the reform of medical practice. But given the structural problems of the Mexican legal culture, we have to say that this program of palliative care really has a status of official guidance or good advice rather than having any power of enforcement.

For the implementation of effective bioethical principles in Mexico, therefore, we suggest that we should look to the development of institutional policies and bioethical standards of good clinical practice and should set aside any hope of specific legal enforcement of bioethical principles. Given the near total absence of enforcement power in the Mexican legal system and the

dim prospect of the development of any enforcement in the near future, we suggest a social or civic implementation of bioethical principles through institutional policies and standards. Such standards could establish bioethical guidelines for medical practice that would uphold patient´s rights within institutions and at the same time provide medical personnel with guidance and, most importantly, hold them accountable. The starting point is to give people an appreciation of palliative care and to train health care workers on their obligations and the benefits on palliative care. Then a system of institutional guidelines could be established to accomplish what the law unfortunately does not provide.

We believe, furthermore that this approach could begin to acquire a certain legal standing. In the absence of any effective legal guidelines, medical care is still basically a legal contract involving an offer of treatment by a physician and the informed acceptance of the offer by the patient. Rather than waiting for more affective enforcement of bioethical principles of the General Health Law, we should explore what can be accomplished through institutional policies that rely only upon the traditional contract for medical services.

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