Ethics and law in public health

Etyka i prawo w zdrowiu publicznym

Dorota Cianciara [1/], Janusz Sytnik-Czetwertyński [2/]

[1/] Zakład Epidemiologii i Promocji Zdrowia, Szkoła Zdrowia Publicznego, Centrum Medyczne Kształcenia Podyplomowego w Warszawie
[2/] Uniwersytet Kazimierza Wielkiego w Bydgoszczy

Wiele wskazuje, że zdrowie publiczne, nauka i sztuka poprawy stanu zdrowia populacji, zyskuje w Polsce coraz więcej uwagi. Niestety, w piśmiennictwie problematyka zdrowia publicznego analizowana jest zazwyczaj z perspektywy poszczególnych problemów zdrowotnych lub metod działania. Zbyt mało uwagi poświęca się etycznemu i prawnemu wymiarowi zdrowia publicznego. Tymczasem wymiary te w oczywisty sposób są odrębne od podejść medycyny naprawczej.

Publikacja analizuje dwa różne porządki myślowe wobec zagadnienia zdrowia publicznego: porządek moralny i porządek prawny. Wbrew pozorom, porządki te stoją u podstaw zupełnie różnych wizji zdrowia publicznego, często przeciwstawnych, akcentując odmienne elementy polityki zdrowotnej państwa. Publikacja, choć odnosi się głównie do specyfiki zdrowia publicznego w Polsce stara się wskazać wartości i problemy uniwersalne w dialogu etyki i prawa.

Słowa kluczowe: *zdrowie publiczne, etyka w zdrowiu publicznym, prawo a moralność*

There are many indications that public health, as science and art of improving the health of the population, is gaining more and more attention in Poland. Unfortunately, in the literature the issue of public health is usually analysed from the perspective of various health problems or methods. Too little attention is paid to ethical and legal dimension of public health.

Meanwhile, these dimensions are obviously distinct from the approaches in curative medicine. This article looks at two different orders of thought on the public health issue: the moral order and the legal order. Despite the appearances, these orders are the foundation of a completely different vision of public health, often contradictory, emphasizing different elements of state health policy. The publication refers primarily to the public health options in Poland but seeks to identify the values and universal problems in the dialogue of ethics and law.

Key words: *public health, ethics in public health, law and morality*

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Adres do korespondencji / Address for correspondence
dr hab. Dorota Cianciara
Szkoła Zdrowia Publicznego, Centrum Medyczne Kształcenia Podyplomowego
ul. Kleczewska 61/63, 01-826 Warszawa
e-mail: dorota.cianciara@cmkp.edu.pl

Introduction

Public health understood as the science and art of preventing disease, prolonging life, and promoting health through the organized efforts of society has been recognized as a part of health system along with cure and care. However one should be convinced that public health significantly differs from curative medicine (Table I).

Keeping in mind such distinctions we can discuss the issue of ethics and law in public health and curative medicine (healthcare traditionally oriented towards the cure). This is our purpose.

Ethics and law

We are often surprised, or even irritated, when moral transgressions are not penalised. We are surprised when situations that are clear from an ethical point of view and elicit internal objections do not force the law to act. As a result, we develop the relativistic conviction that the legal side of the matter is handled inadequately. We therefore ask: where is the justice?

Meanwhile, law and ethics speak, and must do so, with divergent voices, since the ethical (moral) and legal orders are not only two independent systems, two different orders of thinking, which may at times converge, yet more often judge our lives by different measures. Above all, they are different categories of judgement, arising under different conditions, from different views of reality, and serving different principles.

Let us note that ethics is above all a system of internal sanctions, while law deals with the external ones. This fact alone is sufficient to explain the fundamental difference between these domains, which cannot

Table I. Main differences between curative medicine and public health

Criterion	Curative medicine	Public health
	Lens	
Subject	Disease	Positive health, not opposite to lack of disease
Object	Individual	Group, population, community
Aim	Cure	Health protection, health promotion, disease prevention, care to some extent
Glance	Similarity, personalized medicine	Diversity, equity
Limits	Universal, almost universal	Local, regional, national, global
Context	Cells, tissue, organs, tracts, individual, family	Social, environmental, political
Approach	Downstream	Upstream
Anticipation	Moderate	Significant, vigilance, intelligence
	Language and terminology	
Origin	Biomedical	Many disciplines
Field	Hard science	Soft science
	Activities	
Branch	Only health sector	Multisectoral
Commitment	Top-down	Bottom-up
Engagement	Paternalism, patient involvement	Extensive cooperation with many stakeholders
Planning	Essentially short-term	Long-term, sustainability, many planning models
Measurements of performance	Biomedical, randomized control trials	Epidemiological-quantitative, qualitative
Financing	Acceptable "out of pocket"	Predominant public funds
	Social expectations	
Image	Spectacular successes	Many invisible successes
Requests	Highly requested	Not expected, unknown

be superimposed, but can at best complement each other. Furthermore, ethics does not codify punishment. Granted, non-ethical actions can be ostracised or severely reprimanded. But these are spontaneous acts and not predefined sanctions, while law implicitly links transgression with concrete punishments. Ethical sanctions are therefore labile and unpredictable, while legal sanctions are fixed, defined and evident. This is why ethics is an open system which does not require legislative procedures, while law is a closed system which is modifiable only under certain conditions.

Finally, let us add that law relates to order on a systemic level while ethics proceeds from practical habits and serves to maintain order at the level of the individual.

And so it only now becomes apparent that ethics and law, though both refer to a similar paradigm, derive from different perspectives and normative perceptions of reality. The essence of ethics is the person and the individual. That of law, is the system and the whole.

The issue of curative medicine and public health

The issue of public health is a strategic problem. It relates to the very essence of society, its vitality and creative capacity. Contrary to the rules of creating curative services delivery policies aimed at the individual (understood as a person, either a patient or a disease entity), public health is a global problem. Its point of reference is society, which, although it is a composite entity, possesses its own autonomic personality and distinctness. In fact, this sense of distinctness constitutes its keystone, under the aegis of symbols, traditions, religions and culture. And in a certain way, public health policy must reflect this and take it into account.

Similarly, even when medical care (cure) confronts general problems such as, for instance, oncological treatment, its direct or indirect goal is the individual. Therefore, there are many obstacles in enrolling treatment programmes when their final effect will consist in treating a specific group of people. On the other hand, public health is concerned with the development of wellbeing programmes so that their compound action achieves the desired effect at the level of society. The purpose of considerations on public health is therefore different. Here, we are solely looking at global processes and events.

This dialogue between medical care (cure) and public health policy is a classical case of dialogue between atomism and absolutism, transposed to social relations: the individual – the person vs. the whole – society, the nation.

As in the case of the division of norms into legal and ethical, we can see that – despite remaining within the same domain – we are dealing here with a dialogue: public health policy and cure policy and their differing perspectives on reality. And looking at the public health from individual perspective, unfortunately very common in Polish health system, poses a great threat to public health effectiveness, capacity and development.

Health in ethics and law

These two elements: ethical-normative and global-individual (public health/cure) are independent. Their superposition therefore produces the following possibilities:

- the ethical domain as part of reflection on the individual health (the cure perspective),
- the legal domain as part of reflection on the individual health (the cure perspective),
- the ethical domain as part of reflection on population health (the public health perspective),
- the legal domain as part of reflection on population health (the public health perspective).

Let us now examine to what extent these domains influence our perception of the world. Taking the example of rare diseases treated through expensive therapies:

- from the point of view of ethics in the individual context (and so the cure), the matter is simple. Human life is the highest possible value and nothing should impede the doctor in serving the patient;
- from the legal point of view, in the individual context, there is often a conflict between theory and practice, boiling down to patients seeking special treatment, raising funds or seeking legal loopholes. This is because the law solves problems systemically and it is difficult, when a specific situation is not part of the letter of the law, to count on it finding its solution within the existing legal frameworks;
- from the ethical point of view, in the public health context, the treatment of a specific person by means of costly therapies is ethically dubious. The calculation is quite ruthless: using the same financial resources, several dozen other people could be saved using less expensive therapies. Nevertheless there arises an additional dilemma – the quality of life (highly valued) of affected person, his/her offspring, relatives and others in the community;
- from the point of view of law, in the public health context, this problem does not even exist, and law directed exclusively towards the public good ignores the individual.

All this means that without a clear definition and understanding of the context of a given statement – individual or general, strictly ethical or strictly legal – we may feel lost, finally deciding that these opinions do not correspond to our innate sense of justice. This mainly happens because the perspective of ethics, in the individual context, is rarely allowed to express itself. Such expression is mostly reserved for general or universal statements concerning the largest possible group. Meanwhile, our conscience corresponds to the ethical order at the level of a particular person. After all, problems of conscience are individual problems, judgements at the level of our internal self.

This means that a discussion of public health requires great fairness and precision, not only in the manner in which arguments are formulated, but above all with regard to the context and point of view from which it is initiated.

Public health in the ethical dimension

There are many frames of reference when it comes to the problem of public health, since apart from the ethical and legal dimensions it also has an economic one, for instance. The latter possesses a very difficult and unpleasant characteristic from the viewpoint of ethics, namely weighing profits against losses.

The ethical dimension must therefore be large enough to fit the greatest possible number of events and possibilities, including the economic ones. Such a foundation makes it possible to create legal codes at a very general level. And although this makes us convinced that a legal code defined in this manner can only be a set of vague laws, it provides moral stability which is the most important result of any legal code.

It is worth adding that the creation of an ethical code in the domain of public health is challenging, since, apart from factual rules, such a code must also take account of essential social characteristics and result from reflection on the desired future shape of that society as well as its developmental possibilities. The co-adjustment of ethics and law in public health is therefore a difficult and complicated process. Particularly so, since in the social domain we must additionally consider the existing state of social problems and their impact on the psycho-socio-physical condition of citizens, the organisation of the overall healthcare and the possibility of ameliorating it, and finally, the level of moral and civilisational development of society as a whole. But this is precisely the point of stable ethical codes, that no matter what the condition and economic possibilities of a given nation, no matter its current ideologies, political disputes or everyday problems, they define and implement a moral programme within a given field of activity. It is therefore evident that the price paid for the vagueness of such codes is smaller than the danger of constantly changing them due to political, systemic or economic transitions.

And last but not least – there are many examples of medical codes of ethics, as Hippocratic Oath, Declaration of Geneva and subsequent documents, and only few public health codes [1-4]. Meanwhile the mandate of public health is an inherently moral one and only isolated ethical droplets flow into mainstream public health debate [5-13].

Public health within the legal dimension

As we can conclude from the above, public health policy demands an engagement and knowledge of various factors that greatly exceeds the factual scope of health improvement. Public health involves health phenomena, environmental, social and behavioural risk factors, counteracting negative tendencies, anticipating consequences and their impact on the biopsychosocial condition of society. Let us also remember that social groups, such as nations, are characterised not only by mental closeness, but also physical proximity. By the same token, there is a susceptibility to certain types of diseases, for instance linked to geographical location, natural and climatic conditions, plants and animals etc. Thus public health involves the problem of infectious diseases as well as immuniza-

tion and compulsory treatment in specific instances. For these reasons public health activities should be regulated by law.

Within this context, health is therefore a type of social capital that is not limited to the domain of ideas, but also expressed as a vital force as well as the capacity to perform tasks and counteract actual problems. Like it or not, public health policy must therefore relate to the system of which it is a part. It is not an absolutely general category, but is limited by the systemic framework, and therefore law. Let us therefore examine the conditions and limits to which the debate on the efficiency of public health is subject in Poland.

Public health in Poland

The concept itself of public health is not a popular one in Poland and as an issue it is sidelined within the public debate. The same relates to the population's health, health of the nation. Meanwhile, both represent the very axis of a pro-state policy. After all, the very essence of a state is its society.

Polish domestic policy in this domain does not bring the desired results. Actions are spontaneous, contingent upon the situation of the day. The lack of planning and of a schedule for public health system and biopsychosocial development of society is felt deeply.

The most neglected sphere is the psycho-spiritual one. For example: the main way in which the media and politicians transmit their message is through verbal and written expression. News is delivered wrapped in emotion, with the implicit suggestion that each information is unique, all in the atmosphere of constant hysterical menace. Thus, the society is drawn into conflicts that are alien to it, bombarded with negative messages, subjected to constant attacks on its system of values and aesthetics, and as a consequence, on itself. There is no spiritual reward. The domains that serve to soften tensions, primarily culture and art, have become hubs for printing emotions, subjecting cardinal rules to doubt, ruining values and, by the same token, the feeling of security. Similarly within sports, where basic ethical rules such as fair-play have been either strongly limited or distorted. This leads the society into a state of constant tension and a feeling of internal threat and induces a permanent state of stress and anger.

As a consequence, we can observe a lowering of the perceptive capacities of society, including its capacity to learn, a focus on tasks that do not require thought, the need to scrupulously indicate the manner of performing tasks (pervasive procedures) and a general renouncement of common sense. This in turn modifies the nature of social relationships, unduly simplifying them, nearly to a minimum, leading finally to a ubiquitous alienation and atomisation. The end result is the society's complete closure to change, incapacity for creative acts, lack of personal development, total powerlessness and lack of cooperation. This is true in relation to the general public as well as the public health workers' community.

As an result, people's ability to act is affected, their health potential is lowered, which must necessarily lead to deep changes in the scope of the challenges facing healthcare, until now directed towards other goals, under different conditions. This disorganises social life, modifies the investment goals of the state and forces plans to be redrawn in nearly every area of public life.

The state attempts to counteract this through hurried modernisation, mainly within the scope of inadequate systemic re-organisation of public health in order to deal with these transformations. A huge amount of analyses are carried out, which then instantly become obsolete due to the dynamism of these changes. All this leads to the impairment or even partial dysfunction of the system.

Meanwhile, a workable public health policy should start not with an analysis of the current state of affairs, but by indicating – in a free and unrestrained manner – the ideal of a future one. This goal cannot be materially limited, since matter is subject to change and constant evolution. Furthermore, matter does not possess intent, it does not develop itself towards a self-defined goal. This comes from outside, from thought, however it is understood and attributed to an entity (rational or irrational). And it is precisely this fundamental goal that should be imposed upon the current order (and not derive from it). It should be conceived in the most concise form possible, yet spacious enough so that all the fundamental rules for the proper functioning of the healthcare system can be developed from it.

As the first step, this goal should take into account the vital capacity of society. In this regard, Polish society does not have sizeable reserves; we are an ageing society, fatigued by a lengthy period of systemic changes. Our reserves of vitality are mostly located within the domain of smaller, private companies, which is a consequence of Polish traditions and history, forcing citizens to decide for themselves. This is a historic legacy of the partitions, the struggles for independence and the post-war systemic issues, where the government was merely the executor of tasks imposed upon it by foreign powers and not an actual institution in which public trust was placed.

Such an economic model is highly stress-inducing, since it forces people to take direct and individual responsibility for their own decisions. Furthermore,

this manner of working eliminates the possibility for biopsychosocial regeneration, requires constant attention and oversight and is overwhelmingly absorbing and exploitative. This means that the productive part of society uses up its vital reserves in an uneconomic manner, which results in their premature burnout and the necessity of including them on the list of people truly endangered by civilisational illnesses, which normally only appear in older generations.

Public health policy should take this state of overexploitation into account and postulate the allocation of a large part of the funds destined for health protection towards prevention. This is but one of many elements the basis for which must be a thorough analysis.

Public health policy is a task requiring intellectual effort, the final effect of which should be a hierarchical model: a primary objective (expressed as a certain ideal, a primary social value) and deriving from it, particular goals for concrete aspects of public health. This model reflects the structure of ethical systems, where the primary moral value is the basis for all norms, both at the higher and lower level. Public health policy should therefore be idealistic and axiological. Which is why it is closer to the domain of morals and ethical codes than it is to law.

Conclusion

Technical efficiency and evidence-based practice and policy (in curative medicine and public health) has been emphasized in recent years. This focus our attention and efforts on things that can be done, rather then what should be done. Nowadays we need to go back to the public health credentials. Granting the tradition and tokenism is insufficient. Public health leaders should engage in debate on ethics in public health.

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