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Letter to the Editor Open Access

Is the "Lege Artis" Principle Obsolete?

Kurt Kraetschmer*

Austrian-American Medical Research, Austria

In the past, good medical practice used to be defined as "according to the law of the art" and could thus be distinguished from practices that were not conform to established standards. The notion "lege artis" proved helpful especially in forensic medicine when patients claimed that they had not received best possible treatment. Interestingly enough, the Code of Medical Ethics of 1992 does not even mention the notion "lege artis" [1] and in recent times efforts are increasing to abolish it as bioethical principle.

Criticism of the principle has a long history, while at the same time it is widely used until today to assure adherence to established standards, be it in medicine or other professional pursuits where the issue of liability is at stake. A forensic vagueness of the principle has been criticized with regard to fundamental clinical procedures that are considered bodily injury in violation of the constitutional right to physical integrity. Thus, a simple venipuncture performed routinely for thousands of patients daily in clinics, hospitals, private offices and nursing homes violates this right, even if performed lege artis. The offence of bodily injury remains unless the patient's informed consent endows it with legitimacy [2]. The patient's informed consent is also indispensable for therapeutic strategies. Treatment regimens implemented according to lege artis still need the patient's autonomy, that means his/her informed consent to assure adherence [3]; to accomplish this goal behavior modification and shared decision-making have been suggested.

Additional difficulties in complying with the lege artis principle arise when there is conflict with other principles. In the case of dysphagia, for example, a feeding tube might be the only therapeutic option, but if the patient refuses it and insists on alimentation per os he runs the risk of aspiration, ensuing pneumonia and even death [4]. The healthcare providers in charge of such a patient are confronted with the dilemma of lege artis therapy on the one hand and opposing patient autonomy on the other. This kind of dilemma is carried to an extreme when it comes to making decisions near the end of life [5] or to deal with active voluntary euthanasia [6]. Decisions to be made under such circumstances reflect socio-cultural values of a given society and the interlacing of bioethics with political ideology.

The problematic nature of the lege artis principle regarding conflict with other bioethical principles is yet a minor issue in comparison with criticism arising from the fields of research and experimental medicine. In research, compliance with established standards is diametrically opposed to the primary target, namely discovery of new procedures or techniques [7]. Similarly, embracing the theorems of evidence-based medicine can be regarded as tantamount to relinquishing personal responsibility [8] so that bioethical principles might be doomed to fall into oblivion.

In view of past and ongoing discussions on principles of bioethics, it must be borne in mind that the lege artis principle is not part of the four basic principles outlined in the comprehensive work on biomedical ethics of 1977 [9]. Thus, the fundamental question arises as to whether "lege artis" should be designated simply as a "concept" or as a "rule" or whether it should be regarded as the most encompassing principle that presupposes the others: a procedure according to established standards is lege artis provided it is rooted in respect for autonomy, non-maleficence, beneficence, and justice.

As can be seen from the preceding review of critical comments on the lege artis principle, the crucial issues are conflict with other principles and hindrance of progress. What has not been attempted so far is total annulment of the principle and replacement by economic principles. This kind of approach has now come to the forefront in one of the member states of the European Union and was initiated by the Medical Association of Austria. This novel approach to rejecting the lege artis principle deserves attention because it might impact also on hitherto established forensic argumentations and lead to new court rulings on issues of malpractice. It is therefore analysed in detail in the following paragraphs.

The point in case is a malpractice claim by a patient, that was honored by an arbitration committee of the Austrian Medical Association, recommending indemnity payment for past suffering, reduced quality of life, and restricted possibilities for professional pursuits. In a rebutal of the committee's decision, the president of the state Medical Association of Lower Austria implied that bioethical principles can no longer be honored in a time where the highest priority is maximizing profits [10]. Despite the arbitration committee's finding of multiple violations of the "lege artis" principle, the president of the Medical Association denied any wrongdoing on the part of the medical doctors and underscored the priority of economic considerations.

The jury had recommended an out-of- court indemnity payment of forty-five thousand Euros for past suffering and reduced quality of life as well as restricted job opportunities to a fourteen-year-old girl whose "epiphysiolysis capitis femoris" had been misdiagnosed consecutively as "coxitis fugax" and "Morbus Schlatter" so that the young patient ended up-- two years after the first consultation -- with a hip endoprosthesis due to necrosis of the capitis femoris and edema of bone marrow. The jury considered as malpractice not only the original diagnosis made by the doctor in residence of the hospital emergency room, but also the diagnoses made by the pediatrician, by the orthopedist, and by the radiologist who all were consulted by the young patient in the courses of the two years of continuous suffering.

Despite the committee's findings and recommendations, the president of the state Medical Association found reasons to exculpate all the healthcare providers involved: the doctor in residence of the hospital emergency room could not be expected "to have in his head

***Corresponding author:** Kurt Kraetschmer, Austrian-American Medical Research, Austria, E-mail: kurt.kraetschmer@gmx.at

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the picture of an epiphysiolysis capitis femoris", and the orthopedist did not have sufficient time to examine the young patient or to look at the x-rays because he is not reimbursed adequately by the insurance company to manage an "economically positive business." Without addressing bioethical principles, especially the principle of "lege artis," the president placed the entire blame on the "logistic weaknesses" of the system of socialized medicine because, according to him, this system does not provide adequate remuneration for the services rendered by medical doctors.

If such a line of argumentation prevails, bioethical principles will be superseded by the economic principle of maximizing profit. As a consequence forensic argumentations will need new concepts and definitions to distinguish good from bad medical practice under the aspect of economic exaction. It remains to be seen whether such novel approaches will put into question also the hitherto well-established bioethical principle of "informed consent"[1], because it interferes with optimal time management both in clinical settings and in private offices, antagonizing for this reason the principle of profit-making.

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