

Bioethics in South Africa

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Since the early 20th century, bioethics in South Africa has moved through several stages, responding to the same forces and developments as elsewhere, for example in the United Kingdom and United States. In addition, some unique developments in South Africa, for example the death of Steve Biko (the Black Consciousness leader), the HIV/AIDS pandemic, and a peaceful transition to democracy with increased focus on human rights have given bioethics in South Africa its own dimension. Bioethics in South Africa reflects the general concerns of the field elsewhere, but it also stands at the intersection of the concerns of both developed and developing worlds. Thus, issues such as resource allocation, HIV/AIDS, and medical research take on an urgency and character that reflect South Africa's particular historical, geographical, and social conditions.¹

Background

The South African Medical and Dental Council (SAMDC), a statutory body, was established in 1928 with the primary purpose of protecting the public through the maintenance of high professional (including ethical) standards of practice, and with a view to serving the interests of the medical and dental professions—insofar as these interests are compatible with high standards. The wide range of powers vested in SAMDC included the power to institute inquiries into any complaint, charge, or allegation of improper or disgraceful conduct of its members and to exercise disciplinary power over them.

As in most other Western countries in the first 60 years of the 20th century, discussions on medical ethics in South Africa largely took place within the framework of the authoritarian, beneficent, paternalistic behavior expected of professionals supposedly adhering to the Hippocratic Oath and similar codes. The first South African text on medical ethics was limited to discussion of ethics' codes, professional secrecy, advertising, the conduct of consultations, fees and financial matters, and upholding the "traditions" of medicine, with only brief reference to abortion and sterilization and to the ethics of investigative medicine. This text, based on Professor Guy Elliot's experience of deliberations on ethical matters by the Medical Association of South Africa (MASA) and the SAMDC, provides a succinct outline of accepted medical ethics in South Africa (and in many Western countries) in the first half of the 20th century.²

Rebirth of Bioethics in South Africa

In South Africa, as in the United States, theologians played a pioneering role in reawakening an interest in bioethics; several conferences were held in South Africa in the 1960s and 1970s under church or theological auspices. The first, stimulated by the historic heart transplant in Cape Town in December 1967, was on the ethics of tissue transplantation.³ Others followed on abortion,⁴ euthanasia,⁵ professional secrecy,⁶ and clinical experimentation.⁷ Regrettably, these led to very little ongoing immediate public or professional debate.

A Milestone Event in Bioethics in South Africa

A milestone event that did evoke public interest in medical ethics in South Africa was the Steve Biko case. Failure of the SAMDC to exercise its duty to protect the public by acknowledging the unethical behavior of state-employed medical practitioners toward Biko prior to his death during detention without trial in 1977 and failure to take appropriate disciplinary action against them met with resounding criticism nationally and internationally.⁸ The sequence of events through which the efforts of a small group of members of the profession (Frances Ames, Trefor Jenkins, and Phillip Tobias) led to a Supreme Court injunction against SAMDC, which resulted in a reversal of its previous decisions and the imposition of disciplinary action, is well documented.⁹ Such shortcomings show how public and even professional debates on ethical issues in medicine were limited in a repressive, authoritarian society lacking a patients' rights movement and unaccustomed to public discourse on civil and political liberties.¹⁰

The National Medical and Dental Association (NAMDA), formed in 1982 as a result of discontent with MASA's actions following the death of Steve Biko, received international acclaim for its outspoken advocacy against discriminatory practices. MASA, which came under considerable criticism for its inadequate reactions to the Biko affair, subsequently, to its credit, took some steps in an attempt to rectify its previous shortcomings. (MASA and NAMDA have subsequently amalgamated into what is now the South African Medical Association [SAMA].) The statements about medical ethics made by MASA following the Biko affair are part of the public record, and the ongoing challenge is to ensure their implementation in practice. Greater attention to ethical responsibilities toward prisoners, detainees, and hunger strikers was another gratifying response to the Biko case.¹¹ The public confession of guilt by the district surgeon who bore major responsibility for Biko's medical care emphasizes the need to maintain professional independence in the face of state security and other coercive pressures. Recent events in the Abu Ghraib prison and at Guantanamo Bay are noteworthy reminders of how physicians anywhere may violate ethical norms.¹²

Bioethics Education at Medical Schools

In the late 1970s and early 1980s, some medical schools in South Africa began developing modern bioethics education programs, but progress has been slow and somewhat erratic. Generally, such programs remain in a fledgling state, dependent on enthusiastic physicians who have heavy professional responsi-

bilities and minimal training in philosophy or the humanities, and with inadequate financial and institutional endeavors to develop formal programs with committed support from other disciplines (e.g., philosophy, sociology, law). The importance of transdisciplinary cooperation was recognized, and at the University of Cape Town the Bioethics Centre included faculty from several disciplines.¹³

In 2003, The University of the Witwatersrand, whose medical school was the first to begin teaching the new medical ethics to undergraduates in the late 1970s, created a Division of Bioethics with a full-time post for a bioethicist in its Faculty of Health Sciences.¹⁴ The Division is responsible for teaching undergraduate modules and courses for students of medicine, dentistry, and pharmacology, offers an MScMed (Bioethics and Health Law) degree for graduates who wish to gain competency in both medical ethics and medico-legal issues, and has made substantial contributions to international bioethics literature.¹⁵ The idea of an international journal focusing on bioethics issues from a developing world perspective—*Developing World Bioethics*—originated in the Division.¹⁶

The University of Cape Town (UCT) Medical Faculty initiated a new course in bioethics for undergraduates in the early 1980s. Regular postgraduate educational activities followed and the undergraduate program continues to be modified and developed. Several faculty symposia have been held and the proceedings published.¹⁷ These symposia have included theological, philosophical, and sociological debates on death and dying, resource allocation, the doctor/patient relationship, abortion, in vitro fertilization, research on humans, principles of biomedical ethics, moral reasoning, withholding and withdrawing of treatment, healthcare of detainees, hospital ethics, the right to healthcare and the structure of health services, ethical considerations in relation to acquired immunodeficiency syndrome (AIDS), teaching medical ethics, and human rights, human needs, gender, and medical ethics. These proceedings reflect progressive movement toward the views being popularized in bioethics debates in the United Kingdom and the United States. By including colleagues from several disciplines in our bioethics activities at UCT (philosophy, sociology, anthropology, political science, law, etc.) we have attempted to retain a degree of “cultural sensitivity” while seeking to avoid the pitfalls of both “ethical imperialism” and “ethical double standards.”¹⁸ Clinical consultations, research projects, and many educational activities are now well embedded in everyday clinical practice in the UCT Faculty of Health Sciences’ teaching hospitals.

Other universities have also been active. The University of Stellenbosch has a long-standing successful post-graduate program in applied ethics (including medical ethics), based in the Department of Philosophy, and faculty have published several books on ethical issues.¹⁹ An undergraduate educational program in bioethics has recently been established in their Faculty of Health Sciences.²⁰ The Law Faculty at the University of Kwa-Zulu Natal has a long-standing program in Medical Law, Ethics and Human Rights and has published many documents of academic and educational value.²¹ The Centre for the AIDS Programme of Research in South Africa (CAPRISA) has established an ethics program to provide ethical and legal advice for all CAPRISA’s projects and for organizing community outreach programs.²² The Nelson R. Mandela Faculty of Medicine in Kwa-Zulu Natal has also recently appointed a

full-time bioethicist. The Dean of the Faculty of Health Sciences at the University of Transkei has had a long commitment to bioethics and he actively participates in national bioethics activities.

Health Professions Council

The Health Professions Council of South Africa (HPCSA) is the statutory body responsible for licensing and disciplining members of the medical professions, including doctors and dentists in the new South Africa. The HPCSA gives professional guidance on bioethics issues by publishing and distributing a series of booklets on general ethical guidelines for health professionals and medical researchers, as well as more specific guidelines on a range of ethical issues such as confidentiality, informed consent, HIV/AIDS, and perverse incentives.²³

The HPCSA is also responsible for the Continuing Professional Development program for doctors, dentists, and other health professionals. In addition to ongoing education in their area of medical activity, doctors and dentists, for example, need to acquire two ethics points per calendar year, each point representing a 1-hour contact educational session. Accredited institutions, such as medical schools, administer this ethics program, in terms of both quality control and delivery of educational sessions, on behalf of the HPCSA.

Ethics Institute of South Africa

The inauguration of the Ethics Institute of South Africa (EthicSA), an institution independent of all universities, other public organizations, and the private sector, is another important milestone in promoting applied ethics in South Africa.²⁴ In the short time it has been in existence, EthicSA has achieved a high profile by, among other things, undertaking several empirical research projects on healthcare ethics—the ethics of doctors' business practices²⁵ and ethics audits of major public hospitals.²⁶

Research Ethics

Medical Schools

All medical schools have had research ethics committees (RECS or IRBs) for many years. These have been staffed predominantly by senior faculty who have not had any formal training in ethics or research ethics. In recent years, there has been a trend toward a wider spread of committee members. In addition, specific educational programs have aimed at building the capacity required to participate actively in reviewing international collaborative research with a view to avoiding exploitation and enhancing benefits for research subjects and their communities. (See below.)

South African Medical Research Council (MRC)

Guidelines on the ethics of medical research were first formulated by the MRC in 1979. These were subsequently updated in 1987, 1993, and 2002. On the latter

occasion, the guidelines were separated into five booklets to make for easier updating in the future.²⁷

Interim National Health Research Ethics Committee (INHREC)

In the early 2000s the minister of health appointed an INHREC to initiate the work of a newly envisaged National Health Research Ethics Council, a statutory body that was being planned for in the new Health Act. The INHREC, during the 3–4 years of its life, produced a set of national guidelines for medical research and developed plans for the registration, and ultimately accreditation, of all RECs in the country. These guidelines have recently been published.²⁸ With the passage of the Health Act in 2004, the National Research Ethics Council, legislated for in the Act, will now be formed. This council will play an important role in setting standards for research ethics committees and for ethics review and in creating a database of all clinical trials in the country.²⁹

Education in Research Ethics

Major awards to the Universities for Cape Town and Pretoria from the U.S. National Institutes of Health through its Fogarty International Center are making highly valued contributions to capacity building in international research ethics in Southern Africa.³⁰ These educational and capacity-building endeavors are of great importance in an era in which international collaborative research is expanding rapidly and cross-cultural understanding is required.³¹ A newsletter on research ethics activities in the country facilitates networking.³²

HIV/AIDS

The HIV pandemic poses many practical and ethical dilemmas for physicians worldwide, not least in South Africa.³³ Ethical considerations on, for example, confidentiality, but perhaps most notably in relation to the allocation of scarce healthcare resources, have featured prominently in public debate, particularly since the advent of Thabo Mbeki's presidency in 1999. Mbeki holds dissident views about HIV/AIDS, and this, together with support from the minister of health, crucially influenced his government's resistance to rolling out antiretroviral drugs (ARVs) in the public healthcare sector and explains the lack of political will to address the devastating pandemic coherently and urgently. This gave reason for high-profile court cases, most notably involving the Treatment Action Campaign (TAC), a nongovernment organization that forced the government, on constitutional grounds, to roll out an ARV program to combat mother-to-child transmission of the HI virus, thus giving specific content to the constitutional socioeconomic right to healthcare.³⁴

The minister of health has had protracted battles—first with pharmaceutical companies and later with pharmacies—to bring down the cost of drug delivery to the end user in the public and private healthcare sectors. New legislation is having some success in cutting out excessive profits in the chain of drug delivery (e.g., the *Medicines and Related Substances Control Amendment Acts*). The impact of HIV/AIDS on South Africa has been extensively documented,³⁵ and scholarly work has been done on the ethics of HIV vaccine trials.³⁶

A recent detailed study, by colleagues associated with Physicians for Human Rights, has identified discriminatory attitudes and abuse of the human rights of HIV/AIDS patients by physicians in Nigeria.³⁷ An accompanying article in the same journal has drawn attention to the need to study physicians' attitudes and behavior in wealthy countries as well as in very poor nations—where evidence from prisons and medical research suggests that failure to respect human rights and to meet the requirements of ethics codes is not confined to physicians in poor countries.³⁸ The elusiveness of progress in achieving human rights in health in South Africa has also been described.³⁹ The rollout of ARV treatment poses many additional dilemmas—as recently outlined in this journal.⁴⁰

End-of-Life Decisions and Legislation

Although life-saving treatments are often withdrawn in South African hospitals, on such widely accepted grounds as outlined in a published statement on the rationale for withholding and withdrawing treatment,⁴¹ South African law does not expressly permit such action.

Following an appeal to the then president, Nelson Mandela, by the Living Will Society, the South African Law Commission (SALC), a statutory body tasked with researching draft legislation, wrote a report, including a draft Act, on a spectrum of end-of-life decisions—namely, pain control and a natural death, the definition of death, advance directives, withholding and withdrawal of life support, physician-assisted suicide, and active voluntary euthanasia.⁴² The final report has been dormant on the desk of the minister of health since 1998 because, according to unofficial sources in the SALC, she believes these end-of-life issues are concerns only for the minority wealthy section of the population, and therefore do not justify the cost of legislative intervention. The gap between the law and ethically accepted medical actions has recently been reviewed.⁴³

The Way Forward

There has been admirable progress in bioethics in South Africa in recent years, but much remains to be done.⁴⁴ In addition to fostering more and improved bioethics education for professionals, there is a need to ensure that ethical discourse takes cross-cultural issues into consideration and significantly contributes to health policymaking and to healthcare practices. Resource allocation decisions need to be formulated with transparency and accountability and with contributions from the public at large.⁴⁵ Given the gap between what is potentially possible medically in wealthy countries and what can actually be delivered in resource-constrained settings, open dialogue and participation in policy development could contribute to promoting more realistic expectations, by both healthcare professionals and those who need treatment, of what is achievable in South Africa. Formal employment positions for bioethicists will need to be created in Faculties of Health Science in the country to sustain education, provide clinical ethics consultations, and undertake research. Increasingly, such positions will also be required in the private sector.

The greatest ethical challenges for medicine in South Africa and elsewhere arise through the erosion of professionalism by powerful market forces, the widening disparities between care available to those with resources and those

without, the threats from new and recrudescing infectious diseases in an interdependent world, and from the tension between the ethics of individual patient care and the ethics of public health—with its focus on whole populations and the common good. The newly developing field of public health ethics offers opportunities to augment the discourse on bioethics and to address, from new perspectives, the many global and local challenges facing us in the 21st century.⁴⁶

Notes

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