The debate in bioethics. Suffering relief and risk, due to malpractice*

El debate en bioética. Alivio del sufrimiento y riesgo de causa de mala praxis*

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Abstract

In this conference the author exposes his experiences as a doctor. Especially for the relationships that are established with patients. Confident and intimate relationships, noble and generous. Experiences in the old hospitals with all their limitations and with the luminous dedication of those who handled them with effort. Places of true attention to health.

Then we have seen the irruption of the state administration that with its interests and procedures can distort human contact and the primary concern for the good of the sick and for the progress of medicine. On the other hand there are the very high costs of modern medicine and its growing trend to technology,

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with all its benefits but also with its depersonalization and illusion of omnipotence.

There are some disturbing symptoms: Patients have a higher life expectancy, close to one hundred years. Doctors and hospitals are investigated by potential patients via the internet before being elected ... Mistrust is fostered. Then there have been reforms to the health system that regulate economic conditions and remunerations, but in the end prevails the postponement of the poorest and the preference for the rich. And so the business is taking over the nobility of medicine. Time also influences. The time elapsed, the expected and also the dedicated to the attention of the person. On the other hand there is the phenomenon of claims for compensation for medical malpractice, which reach an unfortunate economic dimension that leads to the dramatic game of insurance and its consequences as defensive medicine with its high costs.

And then the question arises whether the first thing is patient care, their person, their health... If we can recover the essence of medicine and act right and honorable… The way of this hope is in the full and cordial dedication to the people, to the suffering person who puts his life in the physician's hands

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The argument of this conference has forced me into reviewing the forty five year span which separates me from that unforgettable day of my graduation, the several periods of my professional life, the evolution which has developed inside and around me; and to ask myself what has changed in a physician, and what in a patient, what in the places where suffering is embraced, studied and treated; how much remains of the positive and virtuous relationship between the one who suffers and he/she who takes care of him; how much has been deteriorated and probably lost forever and why.

It is difficult to imagine that in almost half a century, the major transformations that have affected all the relationships among

people who are united for any reason whatsoever: in between the families, in the political and social organizations, in the labor world, within the professions, inside of the Churches, either with vertical or else horizontal relationships; it must not compromise the link between a physician and his patient, which was imagined at the beginning of time as merely solidary and charitable, and then, each time more, slipped towards the loosing of those unique binding agents which are on one hand the suffering and on the other the dispassionate and devoted outlay of knowledge: elements which balanced symmetrically a relationship that was born as asymmetric, and they used to do it through a link of a benefit which every time adopted a tender and devoted pact.

There are in my memory the old hospitals full of moderately poor sick people, lined up in large rows from which all *privacy* was unspoken of, and notwithstanding, solidarity stories were born, aisles full of lively religious people, that in general were truly committed to service, sections organized by charismatic physicians according to a natural *clinical governance* model, substituted nowadays by an entrepreneurial management which has left in a marginal position if not servile, all those who are or should have been the truly performers of the scene. That remote hospital's structure model, is considered today archaic and non-compatible, with the western reality that in a few decades has been completely dismantled, without almost saving nothing of that which did it, if archaic, but inhabited by a proper and good air flow. A pragmatic attitude which tends to cancel all the traces of our history, and also those who should have been saved and preserved as the basis of an ulterior improvement.

Some traces of this organization model of the medical attention, are still visible in the less developed societies from the third and fourth world, where health clinics and hospital centers can still be found, that revolve around extraordinary medical personalities and missionary nurses, either laity or religious, fully committed, without (looks good) the contaminating factor of profit. There,

groups of tenth of thousands of poor people that the State does not foster, are assisted and taken care of, without sparing no efforts. He who has the honor of speaking to you, has had in the course of his life, the extraordinary opportunity to visit these places and contribute to their work, witnessing that in those conditions the commitment of man substitutes, in whatever possible way, the lack of resources, the technological gap which is there, every day and many times a day, the moral contract of alliance of physician-patient is signed, which, by covering itself of mutual respect and of loyal fraternity, it is not ever exposed to the risk of disappointment and of legal retaliation.

It is not like this with us, and in the rest of the first and second world. In recent years, an investigation commission of the Chamber of Representatives, has taken a frightening photograph of what is happening in our health system, particularly regarding the dysfunctionalities, which are multiple and complex, and that they go from the confusing and unsatisfactory organization of the territorial network of family medicine and of basic pediatrics, to the heterogenic network of the emergencies. In various Regions and several Provinces, the enterprises that frequently follow a subordination logic to the people responsible for the administration management, to the worst local policy, they see hospitable realities where leading placements are still frequently covered and conferred without a public contest, and goods or services are still frequently acquired with no respect for the public evidence procedures.

On the other hand, the ever exponential increasing costs of the instrumental and pharmacological technologies associated with the splurges, have taken the sanitation expense almost to the 8% of the GDP of the country, legally feeding the sick or potentially sick users the conviction that in a country loaded with such an expenditure and the obligation of tax collection from the citizens, and lastly the prevention and the attention should be strictly impeccable.

In this context DÉLABRÉ (dilapidated), also the physicians have committed strongly evident mistakes. The first one is, according to

my point of view, having trivialized in a technological sense, the medical art, sending to people a distorted message that all that counts, are only the machines with their metallic mystery, and that the machines cannot be dishonest, and therefore their use by the physician makes the foreseeable percentage of success very close to 100%. It is true, for example the robotic surgery– applied in many fields –is considered as an evident improvement of the technique, but neither is it deprived of complications and in some cases of failures. The second derived message is the communication that we can already treat almost anything and that almost everything can be healed. Truly, in some pathologies this is true, but there are fields in medicine such as cancer or the neurodegenerative pathologies, of the rare congenital illnesses, in which the intent of treatment is maybe disappointing, and it is precisely there where a message that should feed excessive hopes, is frequently sustained by reasons of speculation, as frequent as, I should say, even too frequent or maybe even each time more frequent.

On the part of the sick person: the population of a country has reached a life expectancy which each time takes more people to the ninth decade of life, and if the huge diversity of goods in the world should continue so brutally in our favor, the life expectancy will in the next future demolish the wall of one hundred years of age for an ever increasing number of men and women. Therefore several expectancies will be given, and a diverse image and management of the end of life. Everything could change in face of the actual phenomena related to the overflow of complete communities, but in today's situation the strength of our economic life –understood it in its overall assembly– makes that the concepts of suffering, of ageing, and of death, represent elements to be rejected, and to be fought with all the available means; and the illness, below the edge of tragedy, be seen as an unpleasant incident on the road, from which to be released in the shortest possible time. The encounter with the selected physician follows all types of complex preliminary paths: very careful exploration via internet to deepen our view

in the pathology itself, to learn about the life and miracles of the physician that is intended to be chosen, the Institution in which he works, and the technological provisions of it, the case study of the physician himself and many other crossed verifications with friends and acquaintances that have had the physician, the hospital and the illness themselves but in a phase and characteristics totally diverse. Please, everything is legal: obtaining documentary information is always a good thing, but preventing a situation, is even better. In any event, it is difficult not to see at the same time the subjacent basis of distrust, the antithesis of that in which trusting each other should have been the first premise of a proper relationship. The patient enters the physician's office and knows almost everything about him; the physician knows almost nothing yet, and thus the relationship is sometimes difficult from the beginning on. In reality, the physician should be able to see coming through the door a person, usually accompanied by somebody close to him, who comes to ask for help. He should see him coming in with his yesterday's history, his living and dead people, his pain and suffering of today. Fortunately it is still happening, but frequently distrust is evident in their eyes, in their attitudes, from the first moments or further on, when the story takes form and enters the core of the problem, interrupted by the sound of the patient, the relative or the physician's cell phone left turned on. The loss of sanctity of this first encounter, maybe in some aspects the most important, it is worsen inevitably, when the physician contaminates its own mission with the charge of his services, sometimes high, or else with the indication of hospitalization which will take some time, even though it could be a short one, there - where the medical service will be performed into the premises regime: it will suffice to pay. The Bindi reform, we have to have the courage to say it, it had some positive and negative elements, but on the whole, I think that the first were prevalent; however, it has prevailed, as many others (let's think of the Basaglia Reform) partially applied only. The most execrable of the possible consequences, consists in allowing

the most fortunate patients to get to choose the physician of their like, pass by several hundred patients who have the same pathology and who are waiting with infinite patience to be called upon by the same hospital, to the front of the waiting line, and all of that just because of the fact that they are rich people and can afford to pay for the medical services. A true shame is, the situation where we see a combination of the economic interest of the professional and the interest of his company or institution, which profits, and very well, with the earnings of the professional himself, over whom the institution should have had applied a control function, warrantying ***at least***!, for him to respect the existing percentages between the institutional work debit and his right to private work within a walled enclosure. Even though this kind of surveillance is not frequently of the institution's interest, it tends to collect in the simplest way, or else collecting the fee that is owed to them. The gratuity of the medical care, does not protect the physician from ungratefulness, which is maybe an endogenous cost related to vocational activities, and on the other hand, not even the gratuity of Jesus' miracles protects him from it, but indeed, the transition of the money constitutes the most aggravating element, and it is the main cause for the estrangement between the physician and the patient.

There is no doubt that the physician's shift from the solidarity service category to the business one, weakens his stand and figure, that once was hieratic, and makes him to appear naked, crushed by his human limitations, the first one among all of them, the wish to possess, even if paradoxically in some cases it can also happen, that the economics' petition greediness should lead to, at least temporarily, the one who has to pay, to comfort himself thinking that the price payed is directly proportional to the physicians value: more pay, a better one should be the physician. But almost always this armed truce shall brake when the outcome is not what it is expected. Every area of medical knowledge has been overrun by the concept of market, even in new branches, and loaded with a magical meaning as the assisted reproduction, which frequently is a

field of true speculations: think about the pain of the illness, the drama of sterility, the irresistible desire to give life to a child, the technological science that provides new and wonderful solutions, and the medical world that has been organized for a huge business: My goodness…!

I have come to the conclusion that in an egalitarian society it would not be difficult to frame the physicians into an exclusive regime of dependence with a salary income fair and just and nothing else. But I understand that saying such a thing is considered as a late backward flow of real socialism, or, in the best of the hypotheses, as an absurd romantic idea totally non-coherent with the capitalist reality.

An ulterior element of remoteness between physician and patient is time. Sometimes briefly agreed or partially consumed and/or requested in an alleged way or impolite on the other, it blocks the relationship with an incomprehension factor that is not born so much from the time assessment used in care, but how much time takes the employee to take care of the patient, which is, in general, the most sacrificed. I have dedicated myself now for many years, to explain to youngsters who choose surgery, that it is necessary to dedicate time explaining the patient, in motivating him, in the management of physical and moral discomfort in the common room, much more time than the one we have dedicated to him in the operating room. Not always can this be achieved because since long time ago, too many years, technology predominance has dodged the humanistic vision of our work and has injected in the young people, the idea that only a technical gesture has importance and that all the rest is uselessly oppressive, or even constitutes a waste of time and in a way does not make to vibrate the strings of personal vanity, of the youngsters with a good surgical training, outside of which there is nothing left.

It also happens that, the physician, identified not only as a professional service provider, but as a paradigm of all the health system, be assigned responsibilities and faults not corresponding

to him, that have to do with the organization as a whole. Physicians considered responsible for late diagnostic or therapeutic expenditures, which are seen as not guilty because in reality the reasons are linked to a deficit in personnel, a few nurses, few social sanitary operators, few technicians, especially in the southern regions of the country which had historical responsibilities of waste of money and cronyism, but over which an excessive violence of the insurance guillotine has strived, of the random expense cutting, with the consequence of an ulterior tragic apoptosis of a health system which forces too many southern citizens to go over the summit of the Apennine Range as a long line of grieving ants that escalate to the northern structures. I am not capable to understand how a cynical intention has led to all of this, but the consequences are before the eyes of everybody: the more the southern structures are decaying, the more it wideness and deepens the wall that separates the two Italys with stories of terrible burdens, with an effect of a disbursement due to the health mobility from the southern regions to the northern ones, that make the first ones to be hungry each time more and more, in advantage of the second ones. Over the shoulders of the Campaign region weighs an ever increasing mobility cost, in favor of other regions, of around 300 million per year. It is indecent that no national government has had seriously worked on the rebalance.

And therefore, the pressure of the people that is around, the responsibilities of the medical class, the hostility already deeply rooted in certain parts of the users, have together created a critical complicity between the treating physician and the patient. Although the relationship, if well modified, remains charged with an emotional meaning, and the disenchantment of the outcome, as well as it happens in other types of relationships with a strong interpersonal charge as in marriage, can easily make a person wonder, during the fight.

The resource of justice is more frequent every time within the civil field, although much less in the criminal one, and this last one

is usually limited to the cases of alleged manslaughter or of serious injuries with disabling results imputable, in an hypothesis, lack of skill, recklessness or negligence of the physician, each one by itself or associated among them, and sees the physician released of any accusation by a preliminary archiving, or in a trial in a high percentage of the cases: and fortunately, given that Italy is with Mexico and Poland the only countries that do not foresee the obligation of atonement of medical guilt, but on the other hand still foreseeing the criminal pursuit of the clinical mistake matched to an act of common crime. Therefore maybe, the physician's behavior is submerged in a kind of atonement that later is revealed as inconsistent, but the media manifest that immediately derives from it, is capable of destroying the credibility, the dignity and the life itself of the professional unfairly accused.

On the other hand, in the civil judicial courtrooms and in the extrajudicial contracting, the request for legal compensation is assuming already the characteristics of a tsunami. They are maybe originated from the honest belief of having suffered harm, for which the treating physicians are responsible, but very frequently are motivated for a rude attempt of getting an improper reimbursement, submitted maybe, a day before the ten year deadline.

Returning to the already mentioned work of the Commission, of the Investigation Commission of the House, it clearly turns out that no other professional category is so heavily exposed to the risk of legal redress actions, and the corresponding civil controversy weighs already more than 10% in the client's portfolio of numerous law firms, that are even considered ethically correct. It impacts heavily on it, the updated legal regulation that imposes to the agreement the need to prove their estrangement to the causes attributed to them, the aggressive policy of some unscrupulous lawyers that always start a trial without even asking a down payment, entering so to speak, in a de facto partnership with the client, (and they can do so, according to the crazy principle of the contingent fees agreement) and this has led the number of yearly demands for real

or alleged professional malpractices of physicians and nurses, or due to disorganization of hospitals, beyond the edge of 30,000, with high prevalence in the southern Italian regions, and for some professional kinds in high risk such as obstetrician/gynecologist, the surgeons, the emergency physicians, the first aid physicians and the anatomy-pathologists. Reading a good article by Biondani, recently published in "L'Expresso", it seems reasonable to consider that also in Italy as well already in the United States, predatory phenomena of organized speculations and frauds are appearing.

The flourishing of this game to the social massacre makes an impact of dramatic consequences.

Health corporations and professionals in particular are being forced to shield by acquiring insurance policies with insurance premiums much higher every time because the insured amounts are higher each time (let's think of the historical case of more than five thousand million liras for the reimbursement due to the death of a child), policies in the hands of a very strong group of a restricted number of highly powerful companies, confederated precisely in the Am Trust Europe, which profit every time more because in these last few years the premiums have increased an average of 5%, while the damages paid have fallen in more than 70%. The corporations, oppressed under the weight of such a great load, are forced to make cuts in other areas, performing personnel layoffs, cutting working hours per capita, cutting the acquisition of goods and services, with the final consequence of an ulterior increase in counter-reactions and therefore of the insurance premiums: and then the circle starts again…

The physicians on the other hand, have given life to the so called defensive medicine. A few years ago, it seems to me that in 2011, the Rome's MDG had presented data of a study that had shown how 78.2% of a congruent and representative sample of the several branches, consider to run as a serious risk by incurring in a trial and by sensing an improper psychological pressure in the course of their own clinical practice, whereas 27.8% of the much

younger physicians fears a damage in the continuity of their quest, and 17.8% has feared of seeing compromised their own image due to the communications media. Therefore a rigorist prescription of tons of tests which are not strictly necessary that bleed out the balances and steal the most useful labor and occupational resources, retention in the hospital of cases coming in to the Emergency Room for mild reasons (and then if I release him, he goes home, becomes ill and sues me?), and a huge amount of attitudes that cost and that as a whole have made to ferment the passive value of defensive medicine to more than 0.7 of the National Gross Product Value, which is equal to more than 10 billion euros, a value that is slightly less than all that it has been invested in research and development in Italy, and almost equal to the amount of the State, in 2012, of the unified municipal tax.

But outside and beyond the economic data, if too heavy and full of regrets and worries, the defensive conduct of the physician forces who is inside and also who is outside of the system, to make himself a terrible question: Do the physicians always choose, independently of what it would be, the most useful therapeutic procedure to preserve the life and wellbeing of the patient, or else they choose for the one that exposes them to the lesser risk?

I do not want to answer this question. But if the answer would be in the direction of the physician saving his own peace and its own reputation also, and in detriment of the patient's health, then we should conclude that an already hectic system made of poor organization, of tricks, of greed, of individual and collective macro interests, has completely distorted all loyalty from the patient, and every word of the Hippocrates Oath.

Are there any corrective measures? Is there the possibility to return calm to our job, and at the same time to cut the barbed wire of entrust? Can we work to rebuild the ruins, and therefore to limit human and social damage?

I think that there is going to be necessary a multiplicity of actions. Let the physicians wear their robe with dignity and pride,

and throw away from themselves forever the disturbing clothing of the merchants. They will not be able to think that the most favorable normative conditions foreseen by the upcoming Bianco-Gelli law (that puts the burden of the damage proof in the hands of the alleged damaged, it fixes limit to compensations and boundaries to medical responsibility) will perform a miracle. Let the forensics class assume responsibilities and abandon the indecency of the agreements by proportional quota per legal dispute, forever ethically and legally condemned, about ten years ago, a time of the disastrous Bersani decree. Let the enterprises not wave their right of tutoring their own rights even when turning to a counterclaim for a reckless litigation, without any false pietisms. Let the communication media be prudent and careful in giving news that prejudge a physician that, even though acquitted of any accusation, sees his reputation damaged forever. Let the Universities form and train honest and convinced physicians, which will show the rigor of the scientific methodology and the love for what is new, without abandoning the humanistic burden which is characteristic of this commitment. A very difficult palingenetic transformation, a recovery action which is probably impossible, because the train of our western world has chosen a diverse railroad and direction.

Even though precisely, when these considerations take over the heart of the elderly physician that has the honor to address you today, then the need to turn to a more humble assessment, from which the option of hope will be born, becomes much stronger.

My long professional life is full of faces, of stories, of relationships with the suffering people that have not been and cannot be always easy. So how could they, when the physician-man carries over himself the burden of the difficulties of his own life, and the patient-man that has in front of him carries with him, at the moment of the encounter, the load and background of his pains, of his actual suffering, of his fear, of his fragility, of his fear for the unknown. I always tell to my associates and to my students, specially to those much younger, that if our doing ends up in a court of

law, and we are called to answer for somebody we have helped or that we believed having helped, or that we haven't helped as he wanted or thought; then we have to ask ourselves if we have spoken sufficiently with him, if we have taken care of him, even with the discussion; if we have been able to reach to him those little signals that the antennae of who is suffering, are ready to detect, those signals that say that he is important to us, that we have in high esteem for his life, because he has put himself in our hands, because it is his life and he has requested from us to foster it.

The speculative bad faith cases will not end, but I think that it is going to be more difficult to take them to the courts of law by a patient who has clearly felt that we have fought voluntarily and free of charge at his side and have gone great lengths for him. And even, some of the medical mistakes can be forgiven, probably those linked to the lack of skill and to lack of prudence, but never to the negligence which is the negative and not dignifying signal, of the task that it has been conferred to us.

I have learned these things, mainly from the ill people, and I have learned from great teachers here and in other worlds. I remember one among all the others, because he was a teacher of the medical knowledge and of life, during the teaching of the university education, and in the exemplary and humble dedication to the suffering, continued until the end of his life when almost dying left his bed, taking with him the infusion pump and the draining, to help his pavilion and pain mates. Peppino Lissa and I that had the privilege of visiting him and catching him in the act of this magnificent example, we remember him with endearing friendship and we are pleased that the prizes to the most meritorious youngsters in the field of bioethics have his name, Mario Coltorti, an unforgettable friend.