

Physicians and Professional Autonomy

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1. What constitutes the exact definition and concepts of the term *profession* is not clear. In Europe, where the word *profession* was born, clergy, physicians, and attorneys have been traditionally referred to as the 3 major *professions*. Here, I would like to state the fundamental features of profession bearing in mind the latter two in particular: physicians and attorneys. (Please note that many of the following statements are based on *The Profession of the Modern Times* [Ishimura 1969].¹)

The fundamental features of a *profession* are as follows:

(1) Advanced knowledge and skills

The first characteristic is that people in a *profession* have a certain systematic knowledge and professional skills (i.e., professionalism) that are substantiated by scientific, historical, and other academic principles, and often require long-term education and training to master.

(2) Recognition of qualification and privileges by state

Secondly, the usefulness of physicians and attorneys has been approved both historically and socially. The government approves their licenses through public qualification exams and other means, provides privileges, and legally prohibits those who are not qualified from performing the acts of professionals.

(3) Non-profitability

Thirdly, the aim of physicians or attorneys is to contribute to the benefit of the general society by providing necessary services that clients demand. This feature distinguishes physicians and attorneys from the commercial activities and business transactions with its primary objec-

tive to seek profits. (Please refer to Article 1 of the Medical Practitioners' Act and Article 1 of the Attorney Act.)

(4) Activities as professional organizations

The fourth feature is that physicians and attorneys have professional organizations in order to function expeditiously. To be acknowledged by society as a professional and to gain, maintain, and further develop their social status, it is considered a necessity for physicians or attorneys to form professional organizations and perform useful activities. These organizations share certain characteristics, such as: 1) carrying out political and social activities to gain approval from the society as professionals; 2) bearing the essential responsibility to educate, train, maintain, and improve the members' skills as professionals; and 3) setting up regulations for members' behaviors and serving as an entity of ethical autonomy by providing disciplinary punishments for members' misconducts as needed.

These are the fundamental features of a *profession*. All 4 features relate to the theme of this paper, *professional autonomy*. However, the last feature, activities as professional organizations, is particularly pertinent, and I will later describe them in more details.

2. The term of *professional autonomy*. The first question is what *autonomy* means.

Autonomy in English is translated as "self-discipline" or "jiritsu" in Japanese. In its common use, *autonomy* means to proactively regulate one's behavior or to behave according to one's established standards, and not based on external governance or control. In the field of philosophy, it is the term that con-

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stitutes the fundamental concept in Kantian ethics. It refers to “the state in which the practical reasoning power is not bound by non-reasonable senses such as external authorities or natural desires, and one sets up and follows his/her own universal rules of ethics” (Shinmura 2008).² It is also considered an antonymic concept of heteronomy.

In his *Critique of Practical Reason*, Kant states that “the autonomy of will is the one and only principle in all moral rules and their corresponding duties [Die Autonomie des Willens ist das alleinige Prinzip aller moralischen Gesetze und der ihnen gemäßen Pflichten]” (Kant 1979: p.78).³ Then, the question is what the autonomy of will is. On this matter, Kant calls the principle of following the universal rules that one has set up (and not the duties placed externally) as “the principle of autonomy of will” (Kant 1979: p.78, and Kant 2012: p.147).^{3,4}

So, then, what are “the universal rules that one has set up”? According to Kant, these moral rules (or universal rules) are something that anyone with reason and will is naturally equipped with without exception. Kant continues, “It is not particularly difficult to determine what must be done when following moral rules, so even an ordinary person with insufficiently trained understanding can easily decide even if he/she is not well versed in worldly wisdom” (Kant 1979: pgs.84-86).³

With these considerations, Kant instructs you to “act so that the maxim of thy will can always at the same time hold good as a principle of universal legislation [Handle so, daß die Maxime deines Willens jederzeit zugleich als Prinzip einer allgemeinen Gesetzgebung gelten könne]” as the moral categorical imperative (Kant 1979: p.72).³ The “maxim of thy will” mentioned here refer to the actor’s subjective principles of actions, and the “principle of universal legislation” are the universal rules (or moral rules) mentioned above. Why did Kant address it as the moral categorical imperative?

Kant states that man belongs to the realm of intellect as an intelligent subject, and, at the same time, is also a member of the realm of senses. All of our actions would conform to the principles of autonomy of pure will if man belonged only to the realm of intellect.

On the other hand, if man belonged only to the realm of senses, then we would be following the natural rules of our desires and mental tendencies and all of our actions would conform to the natural heteronomy. However, man belongs to both the realm of intellect and the realm of senses, and therefore, we cannot say that all of our actions are appropriate in light of the principle of autonomy of will—but we can say that they ought to be (Nakayama 2012: pgs.206-207).⁴

The above descriptions in Kant’s works are not easy to comprehend for us by any means. However, a scholar who is believed to be the leading expert in Japan in the study of Kant provided the following, simpler explanation.

In the Kantian moral philosophy, the autonomy of will and the freedom of will are not really inseparable but rather synonymic. In Kant, the autonomy of will means that the will is independent of anything except moral rules, and that the will adopts moral rules as its own personal standards of will based on his/her own purely rational will. Therefore, the autonomy of will is not simply freedom in a passive sense that it is not bound by sensory or natural desires. Rather, it refers to freedom in a proactive sense, wherein moral rules are imposed as the regulatory foundation of his/her own will, which leads to his/her own actions, and his/her own actions are subsequently judged by these rules. In this way, the moral of an individual actor can be realized only under the premise of free will as the autonomy of will in a proactive sense. Kant thus calls the autonomy of will “the best principle in morality (human ethics).” (Arifuku 2012: pgs.181-182)⁵

The above is the outline of what Kant stated with regard to the autonomy of will. Kant never specifically mentioned *professional autonomy*. Nevertheless, Kant stated that the moral rules that demonstrate foundation of the *autonomy* of will can be applied not only to people but also for all intellectual beings in general (Nakayama 2012: p.72).⁴ The autonomy of will that Kant describes, therefore, should be naturally applicable to the profession of physicians and to professional organizations of physicians. It is also deemed difficult to deny that the term

autonomy in the expression *professional autonomy* is derived from Kant's statements on *autonomy*.

3. Who uses the term *professional autonomy*, and how? The term *professional autonomy* is being used with increasing frequency at the World Medical Association (WMA) meetings where physicians from around the globe meet.

It seems to have started from the WMA Declaration of Madrid in 1987 (hereinafter referred to as the "old Declaration of Madrid"). Officially entitled the *WMA Declaration of Madrid on Professional Autonomy and Self-Regulation*, the old Declaration of Madrid consisted of 10 Items regarding professional autonomy and self-regulation. The main points regarding professional autonomy described in the declaration were as follows.

- (1) The core of professional autonomy is the guarantee that physicians can freely exercise their professional judgment in patient care. (From Item 1)
- (2) The WMA and national medical associations reaffirm that professional autonomy is an essential factor in high-quality care and therefore should be preserved for the benefit of patients, and urge physicians to uphold and assure professional autonomy in the care of patients as a basic principle in medical ethics. (From Item 2)
- (3) As a corollary to professional autonomy, the medical profession has a continuing responsibility to self-regulate the professional conduct of individual physicians. (From Item 3)
- (4) Professional autonomy in patient care is ultimately guaranteed through active efforts for effective self-regulation, and therefore, the WMA urges national medical associations to establish and maintain self-regulatory systems for physicians and to recommend that their members actively participate in them. (From Item 4)

The opinions shown here concerning professional autonomy appear to be the common perception among people in the current medical profession since these points are succeeded by the new revised declaration. I will elaborate on this later.

The old Declaration of Madrid also addressed other issues, such as the detailed notes on self-regulatory systems, information

exchange among national medical associations, public campaigns, and joint actions by national medical associations. (Please refer to the declaration document for more details.)

In 2008, a portion of the old Declaration of Madrid was separated and adopted as the Declaration of Seoul. The remaining portion was adopted as the revised version of the Declaration of Madrid in 2009 in New Delhi. (The old Declaration of Madrid was thus substantially divided into these 2 declarations.)

The Declaration of Seoul, which is entitled the *WMA Declaration of Seoul on Professional Autonomy and Clinical Independence*, states in its preamble that "The World Medical Association, having explored the importance of professional autonomy and physician clinical independence, hereby adopts" the 5 principles.

The Declaration of Seoul inherited the concept of professional autonomy stated in the old Declaration of Madrid in general. Yet, the Declaration of Seoul is characteristic in the way that it closely focuses on the significance of "professional autonomy and clinical independence" from the standpoint of physician-patient relationship as well as the management of healthcare costs involved in clinical medicine, and considers it the most important principle in physicians' professionalism.

The revised Declaration of Madrid (the new Declaration of Madrid) adopted in 2009, which is entitled the *WMA Declaration of Madrid on Professionally-led Regulation*, states in its preamble that "The collective action by the medical profession seeking for the benefit of patients, in assuming responsibility for implementing a system of professionally-led regulation will enhance and assure the individual physician's right to treat patients without interference, based on his or her best clinical judgment," and urges national medical associations and all physicians to take actions on the 8 Items stipulated in the declaration.

The new Declaration of Madrid is characteristic in the way that it emphasizes self-discipline in professional autonomy. The content of the old Declaration of Madrid has been carried on to the new Declaration of Madrid, except for the points, which will be described next. (Please refer to the declaration document for more details.)

4. We will consider what professional autonomy for physicians boils down to and what current challenges there are (if any). As mentioned previously, professional autonomy for physicians is generally believed to be similar to the action principles for modern physicians and their collectives.

Upon examining the overall picture of the old and new Declaration of Madrid as well as the Declaration of Seoul, all of which address the issue of professional autonomy among physicians, it becomes clear that the central element of professional autonomy for physicians is self-regulation within the medical profession. Simply stated, the word “self-regulation” entails freedom from external control and the proactive responsibility that comes with that freedom, namely: 1) to be free of external control (i.e., heteronomy) in patient care, such as governmental or administrative regulations; and 2) to fulfill the proactive responsibility in providing patient care to establish and act upon effective self-regulatory systems.

Needless to say, the self-regulatory systems mentioned above must not be self-righteous ones in service of physicians or their organizations. Naturally, such systems must be able to win consensus among physicians and their organizations as showing a right direction for their profession. With regard to those points, the contents of the previous WMA declarations seem to have paid due consideration, generally. However, the following Items in the new Declaration of Madrid seem to raise more proactive concern from a new perception.

Item 4. To avoid being influenced by the inherent potential conflicts of interest that will arise from assuming both representational and regulatory duties, National Medical Associations must do their utmost to promote and support the concept of professionally-led regulation amongst their membership and the public.

Item 8. An effective and responsible system of professionally-led regulation by the medical profession in each country must not be self-serving or internally protective of the profession, and the process must be fair, reasonable and sufficiently transparent to ensure this. National Medical Associations should assist

their members in understanding that self-regulation cannot only be perceived as being protective of physicians, but must maintain the safety, support and confidence of the general public as well as the honour of the profession itself.

A professional organization of physicians bears the responsibility to perform politically, economically, or socially promotive actions to represent its member physicians to the public. On the other hand, the organization has the duty to make its member physicians fulfill self-regulatory principles. Item 4 above addresses potential conflicts of interest that can be produced between the roles of self-promotion and self-regulation, and encourages the minimization of the effects of such conflicts and to promote understanding and support of the concept of professionally-led regulation of physicians from member physicians as well as from the general public. The problem of potential conflicts of interest has been recognized for a long time, but rarely addressed directly. Item 4, which stipulated this challenge, demonstrates a progressive effort on the part of the WMA.

The professionally led regulatory systems by physicians that are addressed in Item 8 will not receive external evaluation in contrast with laws or ordinances. Nevertheless, these systems must not be tainted with self-interest, nor be protective of physicians; the systems must be fair and rational with sufficient transparency. I would insist that fulfilling these criteria will be essential in protecting the honor of the medical profession and contributing to the safety of the general public as well as gaining their support and trust.

Items 4 and 8 appear to share certain aspects with the aforementioned Kantian principle of autonomy of will. Further, Items 4 and 8 appear to step away from the ordinary concept of professional autonomy and show the WMA’s determination to proactively challenge further difficult problems.

I discussed the issue of physicians and professional autonomy in the foregoing. One final note is that the old and new Declaration of Madrid and the Declaration of Seoul including Items 4 and 8 quoted above only present basic challenges and proposals.

Achieving the goals the WMA Declarations set forth above is principally left to the spe-

cific future actions of the physicians in each country and their national medical associations.

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