

# Brazilian Plastic Surgery and the Medical Code of Ethics

## *A Cirurgia Plástica brasileira e o Código de Ética Médica*

DIONE BATISTA VILA-NOVA  
DA SILVA<sup>1</sup>  
FABIO XERFAN NAHAS<sup>2</sup>  
RODOLPHO ALBERTO  
BUSSOLARO<sup>3</sup>  
LYDIA MASAKO FERREIRA<sup>4</sup>

This study was performed at the Universidade Federal de São Paulo, Escola Paulista de Medicina (Federal University of São Paulo, Paulista School of Medicine) – Unifesp-EPM, São Paulo, SP, Brazil.

Article submitted to SGP (Sistema de Gestão de Publicações/ Manager Publications System) of RBCP (Revista Brasileira de Cirurgia Plástica/Brazilian Journal of Plastic Surgery).

Article received: February 4, 2012  
Article accepted: May 6, 2012

### ABSTRACT

The number of lawsuits against plastic surgeons is increasing, and these specialists should be aware of the Medical Code of Ethics that governs their professional conduct. This study is a review of the Medical Code of Ethics in Brazil and gives examples of how ethical guidelines apply to everyday practice. We studied the Medical Code of Ethics and searched PubMed, SciELO, LILACS, Google Scholar, and CREMESP journals for articles pertaining to medical practice legislation. The Code of Ethics for Plastic Surgery requires that plastic surgeons be aware of their duties and obligations in order to avoid legal problems. They should also enhance treatment by detecting psychiatric disorders and litigious patients.

**Keywords:** Ethics, medical. Ethics, professional. Codes of ethics/legislation & jurisprudence. Plastic surgery.

### RESUMO

Os cirurgiões plásticos devem conhecer o Código de Ética Médica que rege sua conduta profissional, pois cresce o número de processos contra esses especialistas. Este estudo é uma revisão do Código de Ética Médica vigente no Brasil, que monitora (controla, normatiza e/ou define) a atividade profissional, associando-o a exemplos da prática cotidiana. As fontes estudadas foram: Código de Ética Médica, PubMed, SciELO, LILACS, Google Acadêmico e Jornal do Cremesp. Foram estudados todos os artigos pertinentes à legislação que diz respeito à prática médica, sendo apresentados exemplos de cada situação. O cirurgião plástico deve estar consciente de seus deveres e obrigações, fundamentados no Código de Ética da especialidade, para evitar problemas jurídicos. Deve, ainda, aprimorar seu atendimento, detectando alterações psiquiátricas e pacientes mal-intencionados.

**Descritores:** Ética médica. Ética profissional. Códigos de ética/legislação & jurisprudência. Cirurgia plástica.

### INTRODUCTION

The Medical Code of Ethics states that medical guidelines contribute to scientific progress and the empowerment of doctors, without interfering with their decisions<sup>1</sup>.

All plastic surgeons live with the possibility of being sued<sup>2</sup>. The number of lawsuits against plastic surgeons in Brazil continues to grow<sup>3</sup>.

The last decade has seen increased interest in teaching medical ethics<sup>4</sup>. Although all physicians acquire knowledge

of professional ethics after graduation from medical school, plastic surgeons must constantly update their knowledge of professional ethics. Medical records document patient history and treatment. This information is very important because it is disclosed in case of a dispute.

Taking this into account, the Brazilian Society of Plastic Surgery and the Federal Council of Medicine (FCM) proposed revision of the document entitled “Informative and Shared Guide in Plastic Surgery”<sup>5</sup>. Articles published in CREMESP journals<sup>6</sup>, for instance, may help plastic surgeons to better

1. Plastic surgeon, lawyer, and Master in Health Science at the Paulista School of Medicine, Federal University of São Paulo (UNIFESP), São Paulo, SP, Brazil.
2. Plastic surgeon, Professor in the Postgraduate program in Plastic Surgery at Unifesp-EPM, Full member of Sociedade Brasileira de Cirurgia Plástica (Brazilian Society of Plastic Surgery) - SBCP, São Paulo, SP, Brazil.
3. Plastic surgeon, Doctor in Plastic Surgery of Unifesp-EPM, associate member of SBCP, São Paulo, SP, Brasil.
4. Plastic surgeon, Full professor of the Plastic Surgery Course at Unifesp-EPM; Full member of SBCP, São Paulo, SP, Brazil.

understand their role and the professional risks associated with their conduct. Moreover, these articles may increase the interest in improving the relationship between patients and the Brazilian Society of Plastic Surgery.

The aim of this study is to expound articles of the new Medical Code of Ethics<sup>6</sup> and provide examples of ethical issues in everyday practice.

## METHOD

We studied the Medical Code of Ethics<sup>6</sup> and searched PubMed, SciELO, LILACS, Google Scholar, and CREMESP journals<sup>6</sup> for articles that directly or indirectly relate to the practice of plastic surgery. We then created relevant scenarios based on daily practice and cases reported in the literature.

## RESULTS

### Medical Code of Ethics

#### Chapter I: Fundamentals

*II – Priority of all medical attention is given to human health, for the benefit of which the doctor shall act with the utmost care and best professional capacity.*

FCM OPINION: To be approved, a procedure must have passed the experimental phase with results that identify the disadvantages and main potential advantages for the patient<sup>7</sup>.

*XI – The doctor will maintain confidentiality about the information acquired while discharging medical duties, except in cases mandated by law.*

FCM OPINION: In cases of infectious disease, patients may become subject to prejudice if proper measures are not taken. In cases of doubt, the division of Bioethics and Advice should be consulted<sup>8</sup>.

*XII – The doctor will try to improve his efficiency while working with individuals, by avoiding and monitoring health risks related to tasks performed by employees.*

FCM OPINION: Among the basic rights of workers is the right to know and refuse a dangerous task<sup>9</sup>.

*XIX – The doctor will take personal responsibility for professional activities, conscientious that a special relationship of trust is achieved with diligence, competence, and prudence.*

FCM OPINION: In cases where the physician is not present in person, e.g., phone consultation, the physician is still held responsible for the prescription of medicine, examination, and procedures<sup>10</sup>.

#### Chapter II: Doctor's Rights

*II – Indicate the appropriate procedure to the patient, observing scientifically recognized practices and respecting current legislation.*

FCM OPINION: The assistant physician is responsible for his or her prescriptions and needs to have scientific backing. The assistant physician is responsible for monitoring and treating possible undesirable side effects and complications (even if late) when following up on the proposed treatment<sup>11</sup>.

*IX – Refuse to perform medical acts that although permitted by law, are contrary to the dictates of his or her conscience.*

FCM OPINION: The doctor has the right to refuse to treat a patient whose behavior puts the doctor's health at risk, when proper measures are taken (e.g., contacting another facility). The doctor is required to attend to the patient if there is an imminent risk of death<sup>12</sup>.

#### Chapter III: Professional Responsibility

*The doctor is prohibited from the following:*

*Art. 1º. Harming the patient by omission, including incompetence, recklessness, or negligence.*

*The physician is always personally responsible and cannot relinquish this responsibility.*

FCM OPINION: Professional negligence is omission, due to neglect or carelessness, of adequate prescription or treatment<sup>13</sup>.

#### Chapter IV: Human Rights

*The doctor is prohibited from*

*Art. 22. Failing to obtain the consent of the patient or the patient's legal representative after enlightening him of the required procedures, except in cases of imminent risk of death.*

FCM OPINION: Liability concerning this document cannot be dismissed because of incompetence, negligence, or recklessness. The document is useful for both the professional and the patient. It allows the patient to obtain necessary clarifications, and it allows the doctor to thoroughly inform the patients of the risks: medicine is not an exact science. However, this document might result in harmful complications in cases in which the doctor acted innocently, situation in which the judicial implications might be differently considered<sup>14</sup>.

#### Chapter V: Relationship with Patients and Families

*Art. 34. Ceasing to inform the patient about the diagnosis, prognosis, risks and treatment purposes, except when direct communication might harm the patient. In these situations, the doctor should communicate with the legal representative of the patient.*

FCM OPINION: In case of mild mental disability and pregnancy detected upon gynecological examination, the doctor should communicate with the patient's caregiver. If this does not occur, the doctor will be held legally responsible<sup>15</sup>.

*Art. 40. Taking advantage of situations arising from the doctor-patient relationship to gain physical, emotional, financial, or any other kind of benefits.*

FCM OPINION: The CREMESP does not allow recordings or similar evidence as proof that no harassment occurred. However, to avoid unfounded complaints, nursing staff should be present during physical examination, and well-written, detailed medical records should be kept<sup>16</sup>.

*Art. 41. Shortening patient life, even upon request of the patient himself or of his legal representative.*

FCM OPINION: In Holland, the legislature considers shortening human life to be one of the most serious criminal offenses. This is also considered unjustified in Spain<sup>17</sup>.

#### *Chapter IX: Professional Confidentiality*

##### *The doctor is prohibited from*

*Art. 73. Revealing facts he or she comes to know while exercising professional duty, except in the presence of good reason, legal duty, or the patient's written consent. This prohibition remains (a) if the facts are public knowledge or the patient dies, (b) when the doctor testifies as a witness (the doctor will appear before the authority and recuse himself), or if (c) a suspected crime is being investigated and the doctor's disclosures could expose the patient to a penal process.*

FCM OPINION: Refusal of patients with sexually transmitted disease to reveal their status to their partners is considered good reason for breaking confidentiality<sup>8</sup>.

*Art. 74. Breaking confidentiality related to a patient who is a minor, including with his parents or legal representatives, when the minor is capable of discernment, except in cases when withholding information might harm the patient.*

FCM OPINION: An exception would be a child with meningococcal meningitis whose family insists on sending him or her to school without informing the school of the disease<sup>8</sup>.

*Art. 75. Referring to identifiable clinical cases or displaying pictures of patients in professional advertisements, in disclosed medical documents, or in the general media, even with the patients' consent.*

FCM OPINION: Exposing patients is not allowed, even with their authorization, except in scientific studies where images of the patients are necessary<sup>18</sup>.

*Art. 76. Disclosing confidential information obtained during medical examination of employees, even if requested by companies or institutions, unless withholding the information puts the health of the employees or the community at risk.*

FCM OPINION: "A patient with a serious mental disorder shows an artifact similar to a bomb and says he wants to blow

up a plane. If this appears to be a serious threat, it is most certainly necessary to try to avoid this act"<sup>8</sup>.

*Art. 77. Providing information to insurance companies about the circumstances of the death of a patient or providing information documented in the declaration of death, except upon written consent of the legal representative of the patient.*

FCM OPINION: Several guidelines and rules of the medical profession, the Constitution, the Medical Code of Ethics, and the FCM and CREMESP opinions state that the clinical history of patients is confidential<sup>19</sup>.

*Art. 78. Ceasing to instruct assistants and students to respect and protect professional confidentiality.*

FCM OPINION: The responsibility of a doctor to his patients is more important than his teaching role with assistants and students. The privacy of patients should always be protected<sup>20</sup>.

*Art. 79. Ceasing to maintain confidentiality when receiving fees by judicial or extrajudicial means.*

FCM OPINION: "I will entirely maintain secret what I might have seen or heard while exercising the profession or establishing relationship with society, that might not be necessary to disclose" (Hippocrates)<sup>8</sup>.

#### *Chapter X: Medical Documents*

##### *The doctor is prohibited from:*

*Art. 87. Ceasing to produce legible records for each patient.*

*§1° The medical history of the patient must contain the clinical data necessary for efficiently managing the case and must be detailed. Records must be in chronological order and include date, time, signature, and the number of medical records in the Regional Council of Medicine.*

FCM OPINION: A detailed medical record is also required for medical defense in the Regional Council and in the public judicial system<sup>16</sup>.

#### *Chapter XII: Education and Medical Research*

##### *The doctor is prohibited from*

*Art. 101. Ceasing to obtain written, informed consent from human research subjects or their legal representatives, after having explained the nature and consequences of the research.*

FCM OPINION: It is ethically permitted to induce *post mortem*-assisted reproduction using cryopreserved semen and oocytes from cancer patients whose treatment, when alive, prevented gamete formation. In these cases, prior authorization from the deceased is strictly required<sup>21</sup>.

## DISCUSSION

Informed consent is dependent on the quality of the relationship between the plastic surgeon and patient. The

attentiveness of the doctor before and after the operation is extremely important to maintain a good relationship. The doctor's observance of ethical principles results in good treatment and, in the context of a collaborative relationship with the patient, satisfactory outcomes.

The doctor and patient should have a contract, as discussed in article 101 of the new code<sup>6</sup>. Informed consent should be part of the clinical pathway<sup>22</sup>, as is common in other countries<sup>23</sup>. The new study performed by the Federal Council of Medicine and the Brazilian Society of Plastic Surgery complements the documentation required for understanding different decisions taken by the doctor<sup>5</sup>.

In modern times, it is of utmost importance to improve initial treatment and detection of litigious patients as well as psychiatric disorders<sup>24</sup>. Medicine that is guided by ethical principles will promote better relationships between doctors and patients and lead to better solutions<sup>25</sup>.

The lack of clarifications prior to treatment is one of the reasons for patient dissatisfaction and disputes. Prevention is the best medicine to avoid problems. It is important that the plastic surgeon be aware of his duties and obligations in order to avoid legal problems.

As the magistrate does not make scientific decisions, the doctor diagnoses and manages disease according to his own convictions. However, as evidenced by recent sentences entered by the judiciary, professional guidelines, in addition to being an indispensable resource for doctors, influence judicial sentences<sup>1</sup>.

## CONCLUSIONS

The guidelines contained in the Medical Code of Ethics and FCM opinions are important resources for physicians seeking to prevent lawsuits. Physicians should have knowledge of these guidelines and consult them frequently.

## REFERENCES

- Campos RAC, Camargo RAE. As diretrizes médicas como fonte do direito. *JAMB*. 2010;1369:30.
- Patané J, Patané CV. Legal responsibility of the Plastic Surgeon. Propositions. *Rev Arg Cir Plást*. 1996;2(2):123-7.
- Silva DB, Nahas FX, Bussolaro RA, Brito MJ, Ferreira LM. The increasing growth of plastic surgery lawsuits in Brazil. *Aesthetic Plast Surg*. 2010;34(4):541-2.
- Dantas F, Sousa EG. Ensino da deontologia, ética médica e bioética nas escolas médicas brasileiras: uma revisão sistemática. *Rev Bras Educ Med*. 2008;32(4):507-17.
- Conselho Federal de Medicina. Novo Código muda realidade em hospitais. *Jornal Medicina*. 2011;184:6.
- Jornal do CREMESP. Disponível em: <http://www.cremesp.org.br>
- Conselho Federal de Medicina. Lançadas normas para reconhecimento. *Jornal Medicina*. 2012;205:9.
- Conselho Regional de Medicina do Estado de São Paulo. Quebra de sigilo por "motivo justo" causa grandes dilemas aos médicos. *Jornal do CREMESP*. 2012;289:16.
- Conselho Federal de Medicina. Ética em debate. *Jornal Medicina*. 2008;173:18.
- Conselho Regional de Medicina do Estado de São Paulo. Prática de trocar receita é considerada infração ética. *Jornal do CREMESP*. 2012;290:16.
- Conselho Regional de Medicina do Estado de São Paulo. É obrigação do médico? *Jornal do CREMESP*. 2009;263:14.
- Conselho Regional de Medicina do Estado de São Paulo. Paciente desordeiro. *Jornal do CREMESP*. 2011;279:14.
- Conselho Federal de Medicina. Médicos brasileiros são bem avaliados. *Jornal Medicina*. 2012;204:7.
- Conselho Regional de Medicina do Estado de São Paulo. As dúvidas da vez estão relacionadas à responsabilidade profissional. *Jornal do CREMESP*. 2007;237:14.
- Conselho Regional de Medicina do Estado de São Paulo. Médico pode quebrar sigilo para curador legal? *Jornal do CREMESP*. 2009;266:14.
- Conselho Regional de Medicina do Estado de São Paulo. Análises do Cremesp ajudam a prevenir falhas éticas causadas pela desinformação. *Jornal do CREMESP*. 2009;264:12.
- Conselho Regional de Medicina do Estado de São Paulo. Morte assistida ainda é polêmica em vários países. *Jornal do CREMESP*. 2011;286:16.
- Conselho Federal de Medicina. Código define limites de divulgação médica. *Jornal Medicina*. 2010;185:6.
- Conselho Regional de Medicina do Estado de São Paulo. Prontuário de pessoas públicas requer sigilo idêntico aos demais. *Jornal do CREMESP*. 2011;283:16.
- Conselho Federal de Medicina. Professores também devem seguir regras éticas. *Jornal Medicina*. 2010;186:7.
- Conselho Regional de Medicina do Estado de São Paulo. Reprodução assistida ganha novas regras. *Jornal do CREMESP*. 2011;281:15.
- Ferraz EM. Complicação ou erro médico? *Rev Col Bras Cir*. 2006;33(4):205-6.
- Gorney M, Martello J. The genesis of plastic surgeons claims. *Clin Plast Surg*. 1999;26(1):123-31.
- Brito MJ, Nahas FX, Barbosa MV, Dini GM, Kimura AK, Farah AB, et al. Abdominoplasty and its effect on body image, self-esteem, and mental health. *Ann Plast Surg*. 2010;65(1):5-10.
- Udelsmann A. Responsabilidade civil, penal e ética dos médicos. *Rev Assoc Med Bras*. 2002;48(2):172-82.

### Correspondence to:

Dione Batista Vila-Nova da Silva  
Rua Jorge Tibiriçá, 16 – ap. 122 – Gonzaga – Santos, SP, Brazil – CEP 11055-250  
E-mail: [dionevilanova@terra.com.br](mailto:dionevilanova@terra.com.br)