OUR MEDICAL ETHICS LAW

unfinished business

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In the view of Francisco Bernate Ochoa, professor at the Faculty of Jurisprudence of the Universidad del Rosario, the law is lagging behind the country's current realities, so it needs reforming. This would lead to an improved health service.

When the subject of Colombia's health system comes under debate, some see it as a glass half empty while others less pessimistically regard it as half full. The former state their case that there is insufficient health coverage, long appointment waiting lists, refusal to carry out procedures, and the need to seek state protection to gain access to some services. The latter hold up as evidence Colombia's Law 100 of 1993, the legislation covering and controlling the country's integrated social security system, claiming it allowed people to access health services regardless of their social status, although there are elements to improve.

"What Colombians in general sometimes forget is how we functioned before Law 100, when if you didn't turn up at the clinic without a bank card, you weren't treated," recalls Francisco Bernate Ochoa, professor at the Faculty of Jurisprudence of the Universidad del Rosario. "Midwives, witch doctors, and faith healers were commonplace then, and religious institutions often ended up providing medical services," he adds.

From the vantage point of having lived under the former system—or of having suffered it, in his own words—Bernate values the current system: "Any documented Colombian is treated in an emergency situation. The financial question is looked at afterwards. Yes, there are shortcomings and fraud, but for every one negative case that is noticed, we have dozens of successful cases that go unobserved."

← Lawyer Francisco Bernate values the current system because any documented Colombian is treated for emergencies. Although there are shortcomings and fraud, for every one negative case that is noticed, there are dozens of successful cases that go unnoticed.

"We can admit that there is still a stratification, and there are still greater facilities for people of means. Unfortunately, that is inevitable in Colombia. But the fact that a service is guaranteed for any Colombian without them having to pay is a great move forward," he highlights.

This lawyer specializing in Criminal Law stresses the advances obtained, and he is sure there are more to come; he points out, however, that there is unfinished business that has never received the attention it warrants: reform of the Medical Ethics Law (Law 23 of 1981). His ideas on this are laid down in the article *The challenges facing reform of the Medical Ethics Law: a vision based on criminal liability*, published in 2016.

"When the Medical Ethics Law was issued it was used for patients to contract a trusted doctor who would do everything; they were known as family doctors or GPs. That doesn't happen today because we are all insured through a public EPS scheme, a pre-paid insurance, or a complementary medical plan. This is why I believe it is necessary to adjust the model implemented in 1981," the professor explains.

Since the publication of his article, the panorama has undergone few changes, the reform project for the Medical Ethics Law never having evolved. The expert points out, however, that there have been some advances in legislation on the application of euthanasia for minors, as well as in awareness of the issue of safe surgery, work driven principally by Lorena Beltrán, a person who suffered the consequences of badly executed plastic surgery.

Bernate considers that this is one specific aspect that should be sorted out with the greatest urgency, since rules are required for carrying out certain specialties, cosmetic surgery being a case in point.

→ There have been some advances in Colombian legislation, such as in applying euthanasia for minors, and in awareness of the issue of safe surgery.

Similarly, he believes it is necessary to make changes in other areas, such as administrative practice, finance, limitations in coverage and those related to abusive treatment of citizens. "Colombians are very drawn to exploiting something when it works, and to eventually working it to death. The amount of medical visits in Colombia is among the highest in Latin America. And then there is the excess in expensive cosmetic treatments, unnecessary operations, charged to the system." Bernate's understanding of such abuses runs to a long list, including "nurses obtained through health protection but who end up as household workers, cases involving exotic demands, such as requesting equine therapy, and these have to be paid for by all we Colombians. The immense number of fraud cases that come up through the social security health system involving high-cost drugs, for example, which are then sold on the black market; this kind of fraud is scandalous and widespread," points out Bernate.

Nevertheless, this criminal lawyer is convinced that the glass is half full in terms of the health commitment, and that it can be topped up by including other elements in the health service and by reforming the Medical Ethics Law. "I think we are on the right track, but we have to provide a few more guarantees that professionals are the right ones, that the EPS public system offers cover, that institutions update, and that resources coming in are reinvested in health and not in personal things; I think this is where we have to make progress."

The urgent reforms needed for the Medical Ethics Law

The Medical Ethics Law concerns three fundamental aspects: patient-doctor relations, the rights and duties of doctors, and procedures for the Medical Ethics Tribunal. In the view of Professor Francisco Bernate, these are the most pressing aspects to be addressed by a reform of Law 23 of 1981:

- Demand that doctors have the required training and academic preparation to practise specialties.
- Clearly establish:
  - Patient rights and responsibilities.
  - Doctors' rights and duties.
- Clear regulations regarding:
  - Cases involving diagnosis of illnesses that cause minimally conscious states (such as comas).
  - Conscientious objection.
  - Voluntary interruption of pregnancy.
- Determine clearly and precisely:
  - The form and function that professional associations should have and exercise.
  - The functioning of the Medical Ethics Tribunal, which does not allow the person who is a victim of medical negligence to be present to question and debate issues in hearings. "We must make the Medical Ethics Tribubal operative and then we will quickly see better results."

IN INTERMEDIATE CARE

These are Francisco Bernate's concepts concerning some specific aspects of health in Colombia.

On patient responsibilities:
"As patients we have plenty of rights but no duties. Every clinic gives one a list of duties (different from clinic to clinic) and nothing happens if we do not meet them. This should be subject to clear regulations and consequences: if you keep information from a doctor, if you lie to a doctor, if you don't pay your bill, if you refuse a treatment; in short, all this should be far more specified."

On alternative medicine:
"Colombia is still a very conservative country when it comes to allowing alternative treatments. It is a country where, for example, a 'right to try' law has not been recognized, which means the possibility of applying an untried experimental method when no other solution is available. Colombia does not acknowledge therapeutic experimentation. I believe this is still a country that is very closed to scientific innovation in therapeutic, diagnostic, palliative and other matters."

On 'protectionitis':
"Medical practice certainly needs to be dejudicialized, so you do not always have to turn to rights protection (to receive health service). This must be dejudicialized and adapted to the reality of insurance."

On uses of technology:
"It is incredible that each admission to a health institution in Colombia generates a new clinical history without our having access to an online system allowing us to know a person's previous medical history."

On the patient-doctor relationship:
"Unfortunately, findings against doctors have been widespread in Colombia, not only in cases in which evidence shows no error, but also in the way in which this brings in more resources and people who are answerable. This has led—as we have studied at the Universidad del Rosario—to patients waiting for doctors to make a mistake so they can sue them and walk away with a handsome payment. In turn, doctors are increasingly more worried about legal aspects and what is known as "defensive medicine". In other words, practising medicine in a way that everything is overshadowed by a future legal case. This is very painful and has significantly damaged the patient-doctor relationship."

On Colombia in relation to the rest of Latin America:
"I would have thought that Colombia is in second place in Latin America in terms of its health system (after Chile). If you look at it, Colombia has become a destination for health or medical tourism in all spaces: oncology, pediatrics, cosmetic surgery, gynecology, obstetrics... Colombia is a country at the scientific forefront in medical issues."