

Confidentiality in obstetrics in the XIXth century Romania

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Abstract

Before the last part of XIXth century one cannot speak about obstetrics as a distinct medical discipline in Romania (nor in the most of Europe as a matter of fact). The act of birth was aided by untrained midwives, whose empirical skills were responsible for numerous deaths. The purpose of this article is to present the way medical secret was implemented in obstetrics in Romania, its particularities and the influences guiding its development. Understanding the particularities and the evolution of the ethical ideas in medicine may aid our understanding of today's particularities of medical ethics in Romania and the way it is implemented in clinical practice. By using original and derived sources obtained from the States Archive, the old fund of books from the Romanian Academy, and the National Library of France, and also online resources of old books (DacoRomanica for Romanian documentary materials, Gallica for French documentary materials, and Google Books and archive.org for materials in English) we were able to draw a sketch of the medical secret in obstetrics, whose main conclusions are: (1) medical confidentiality in Romanian Principalities, even if it has specific elements, like the almost complete absence of regulations or etiquette regarding the medical secret, is highly influenced by French and Ottoman culture; (2) the most preeminent regulations regarding medical secret belong to Midwifery institution, being implemented 30 years before the law regulating it for all medical disciplines; (3) knowing what are the origins of the medical confidentiality (and medical ethics in general), may lead to a better understanding of the way ethical principles are implemented in today's clinical practice.

Keywords: confidentiality, obstetrics, evolution, ethical ideas

Introduction

Before the last part of XIXth the situation was not however significantly different compared to other European countries - for example, in Britain the first successful attempts to organize the midwifery institution were done in 1872, with the Obstetrical Society of London issuing certificates for competence to midwives⁽¹⁾. The first attempts to organize and legislate the midwifery institution in Romanian Principalities were done in the first half of the XIXth century. In Walachia, in 1837 Mihai Ghica, manager of the 'Pantelimon' Hospital, buys the ground for an obstetrics hospital that will be opened in 1839. Two years after are printed a regulation for the hospital⁽²⁾, and a manual for midwives⁽³⁾. In Moldavia is founded in 1852 the Grigorian Institute, aimed toward training midwives. The Institute is founded by the Prince of Moldavia, Grigore Ghica, and includes an obstetrics clinic, a Midwifery School and an Asylum for the protection of the children⁽⁴⁾. Both however trained insufficient personnel, making that, until at the end of the XIXth century, numerous births to be assisted by unlicensed midwives⁽⁵⁾, even in urban areas⁽⁶⁾. The purpose of this article is to present the way medical secret was implemented in obstetrics in Romania, its particularities and the influences guiding its development.

Methods

The study was conducted using original and derived sources obtained from the States Archive, the old fund of books from the Romanian Academy, and the National

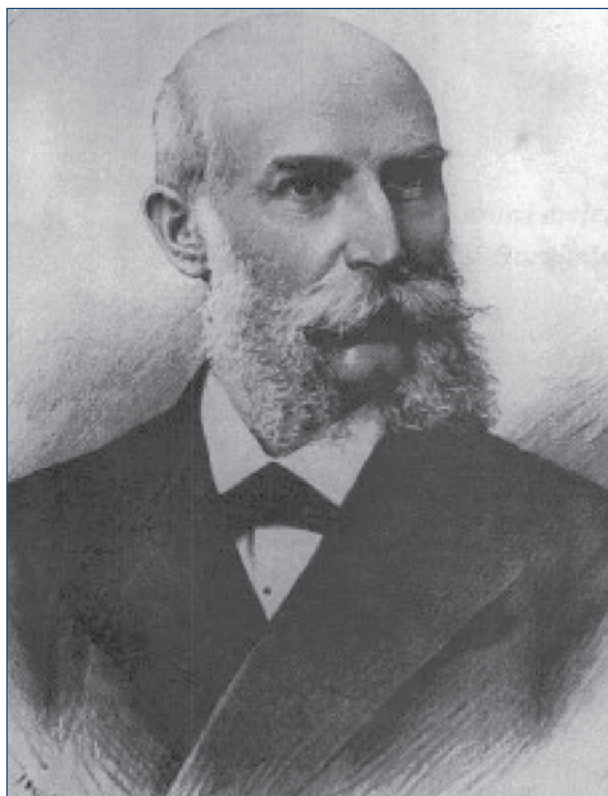
Library of France, and also online resources of old books (DacoRomanica for Romanian documentary materials, Gallica for French documentary materials, and Google Books and archive.org for materials in English).

Results

Medical secret before the XIXth century

In Europe the Hippocratic oath, respected by most physicians, specifically forbid the breach of secrecy (see Latour-Dejean⁽⁶⁾ for a detailed analysis). Keeping in mind however that the most influential culture for the Romanian Principalities before the XIXth century was Ottoman, we analyzed the way medical secret was implemented there. Data is scarce as the medical guild was mostly unregulated, and the medical profession was open (everyone could declare itself a physician and practice)⁽⁷⁻¹²⁾. However, the ethical standards for the medical profession in the Ottoman empire are known to be derived mainly from writing of Abu al Hasan al Tabari that writes, in 970 AD: 'The physician ought to be modest, virtuous, merciful, not slanderous or addicted to liquor and speak no evil of men of repute in the community or be critical of their religious beliefs. He should honest towards women and should not divulge the secrets of his patients'⁽¹³⁾. His principles, derived from both scriptural sources, revealed to the prophet Muhammad, and western texts (especially Galen and Hippocrates), stayed at the bases of medical ethics in the Ottoman empire in the middle ages⁽¹⁴⁾.

In Romanian Principalities, medical confidentiality was not considered as an essential element for the



Iacob Felix (1832-1905),
one of the founders of Romanian Medical Hygiene Speciality

physician - patient relationship, as suggested by the fact that on many occasions, physicians were used as spies, informers or diplomats (for a detailed discussion see Samaritan⁽¹⁵⁾). The only passage where a violation of the medical secret is described is identifiable in Cantemir's book 'Evenimentele Cantacuzinilor si Brancovenilor', which describes an event in the life of Constantin Brancoveanu: a Turk, kinsman of the Caimacan of Constantinople, stricken with disease, was visited by the secretary who informed him, in the presence of his physician, that the prince of Wallachia was to be declared a rebel and demoted. The physician told a friend about the plot and asked him to inform Brancoveanu. The latter did not believe the Greek, believing that it was just a rouse to get some money. As the Greek physician was believed unworthy of an answer, and Lord's fall was inescapable⁽¹⁶⁾.

Old Romanian legislative texts are extremely scant on this issue of medical ethics. The Laues of Vasile Lupu⁽¹⁷⁾ and Matei Basarab⁽¹⁸⁾ state the fact that the physician's testimony may be used in a court of law: 'The midwife or healer can betoken, for they have seen the child and learnt if it were sodomy or not'⁽¹⁷⁾ or 'Whensoever the healer shall utter that it is a pestilent sore or not, we shall give credence to his words'⁽¹⁷⁾ or 'Whensoever the healer shall say that such arms did not inflict the pestilent sore and the testaments shall say that the sore is pestilent, one shall believe the healer before the testaments'⁽¹⁷⁾. As a result, at least within the ju-

dicial system, professional secrecy was not deemed as relevant, the physician being obliged to enunciate the medical condition of his patient. This approach was identified in other countries as well. For example, in France, Louis XIII gave in 1666 an edict, whose main purpose was to limit the duels and other aggressive acts, that obliged the surgeons to declare the persons they have treated for traumatic wounds possibly caused by duels and such: 'Amongst them, the surgeons must declare to the commissary, the wounded that were bandaged at their place or elsewhere, for the commissary to be able to do its report to the police...'⁽¹⁹⁾. The main difference between the Romanian Principalities and other countries is that in the former physicians were not openly against these regulations. For detailed discussions regarding the way physicians fought against these regulations, that were considered a means of limiting the trust of their patients, see Brouardel⁽²⁰⁾ or Hallays⁽²¹⁾ (Figure 1).

Medical secret in Obstetrics in the XIXth century

The first legislative texts providing useful elements in assessing medical secret are a series of regulations for the midwifery institution. Thus, an Administrative Manual from 1834, Moldavia, stated in Art.10 that 'The midwife shall not be absolved for the forthright or thievish confession of new mother confidences... be them wed or not'⁽²²⁾. Thus, professional secrecy does not only refer to medical information but also to any non-medical information they might have access to during treatment. Furthermore, secrecy must be complete, as the midwives were prohibited from disclosing any information about their patients, neither in public, nor in private. The form of this paragraph is similar to the article 378 of the French Penal Code from 1810, from where it was most likely taken: 'The physicians, surgeons, and other healthcare workers, including pharmacists, midwives and all other personnel, that had access, by their function or profession, to secret that were entrusted to them, and reveal those secrets, will be punished with imprisonment from one to six months and a fine from 100 to 500 francs'⁽²³⁾.

However, secrecy is not universal, as there are circumstances in which it may or is mandatorily disclosed. Exclusions from medical secret are:

■ **Abortion.** This was prohibited and, if the midwife is asked to perform the abortion, or provide the means for its performance, she was bound to inform the competent authorities: Art.5 'The midwives shall have a duty to secretly expose before the local Lordship, women who prompt towards unlawful purposes, and those who ask for the means to serve for a miscarriage'⁽²²⁾. There are two reasons for which the medical secret can be disclosed in case of abortion. First, according to the Law of Caragea from 1817, intentional abortion is considered a valid reason for divorce⁽²⁴⁾. By allowing the revelation of this secret by the physician, the law ensures that the husband is able to take the necessary precautions to be able to have children. Second, abortion was considered

to lead to the death of a human being. Therefore, the one assisting the abortive procedure could be considered a murderer. Brouardel considers that, for this argument, the physician/midwife should only disclose the person doing the abortive procedure, and not the name of its patient. By disclosing the name of the one conducting the abortive procedure, it may further save other lives that will be ended by the same person⁽²⁰⁾. This limited disclosure is however not enough in accordance with the Moldavian regulation, that specifically states that the midwives ought to tell both the one practicing and the one requesting abortion.

■ **Testimonies in the judicial system:** Art.11 'If a midwife shall be called upon by the Lordship for a cunning inquisition, then she shall, to the best of her knowledge, recount before the Lordship all findings at length'⁽²²⁾. The source of this article can be traced toward the Vasile Lupu and Matei Basarab Laues (see above). The disclosure in this case must be comprehensive, regarding all data about a specific case, not only those strictly needed in a specific case, unlike more recent regulations that specifically limit the disclosure to the minimum needed for a specific case.

■ **Identifying a pregnancy of an unmarried person.** In this case, the midwife must inform the patient's mother or mistress (if the pregnant woman is a servant): Art 12. '...And if doubt should linger or even signs (of carriage), then wisely shall inform the mother of their daughter, or the master for the servant'⁽²²⁾. This article is of an uttermost importance for the medical ethics in Romania as, beside stating an exception to medical secret, it also brings the first regulation that specifically includes the information process as part of the duty to care for the patient, a prerequisite for respecting the autonomy of the patient: Art.12. '...to inform the mother on the closing of the birthing time, or the mistress for their servants and to tend for the child so as not to be discarded or forsaken'⁽²²⁾. The unmarried woman and/or servant were not considered as having decisional capacity, therefore being incapable of taking medical decisions for themselves.

Alexandru Dimitrie Ghica (1796-1862) was the ruler of Wallachia between 1834 and 1842. It was appointed as ruler by Russia after the end of the Russian occupation of Wallachia (1828-1834). He organized the healthcare services, founded the Maternity hospital, and started the construction of the 'Brancoveanu' Hospital. The Regulations of the Maternity hospital, signed by him are extremely important for the analysis of the medical secret in obstetrics, as it has a whole section dealing specifically with it. The section is presented below.

1. 'This settlement shall have two partings, quite discerned from one another; one shall accustom women who wish to remain unbeknownst; and the other, for the ones who need no such covering.

2. Any who should enter the first parting shall be charged a fee to meet their spending.

3. Persons who wish to remain unbeknownst, arriving at the gate, shall be received nonetheless and persons may ask not their names, nor quality, nor family.

4. Such persons entering the hospital shall bear a sealed note, to contain their true name, given name and surname.

5. On such note, the woman's doctor shall betoken the number of said person's chamber and bed.

6. The note shall remain with the woman, sealed alike upon departure, and she again shall bear it on herself.

7. Such note shall not be opened, but for a case of death of the bearer, so that she may be known, and her family be informed, again veiledly to her family.

8. Each woman or girl, in this class, shall be granted her own chamber.

9. No person may enter such chamber but for the women's doctor, hospital midwife, and a scholar for findings.

10. This parting shall be shaped forevermore, only the most honest and demure scholars.

11. Such person may enter with her face wrapped, or mask or in any other way, and no person shall upset her upon entry, nor during stay, nor upon departure'⁽²²⁾.

The main ideas from this regulation are:

■ the possibility to buy the secrecy of the medical act. For persons that are willing to pay the birth can be done without anyone knowing their name, origin, or even their face. All other benefit from the standard medical secrecy, as presented above⁽²²⁾. To be noted that the administrative manual was printed in Moldavia, whilst the regulation was for an Institute in Wallachia. However, in the beginning of the XIXth century most regulations and laws were similar in those two countries (both were at the intersection between Russian and Ottoman influences, numerous rulers ruled in both countries, numerous laws were copied from one country to another, see e.g. the Vasile Lupu Laue that was included in the Matei Basarab Laue, and so on). Also, most advances in medicine, the organization of healthcare and hospitals were similar, only separated by a few years (see Samarian for more details)^(15,25,26). It is therefore reasonable to speculate that the same principles of medical ethics were applied to both Principalities.

■ the only allowed breach of the confidentiality for persons paying for extra services is when the patient dies. In this case the body must be sent to the family, and not to be used for learning, as would be the case with an unclaimed body, see the General Regulations for the Hospitals in Bucharest from 1834 that states in Art 25 the following: 'The bodies of those who will die in the hospitals of Bucharest, shall be given to the School for Physicians and Surgeons, except for cases in which the bodies will be asked by their parents or relatives, case in which they shall have to take care and pay for the funerals'⁽²⁷⁾.

This extreme secrecy is probably caused by Ottoman influence. For example, Cantemir described, in

'The History of the Byzantine Empire', the following: 'Hakin Effendi or the first physician enter her chambers (Sultana's wife, nn) but may not utter words, but through a veil strewn around her bed. And if he must feel her pulse, he may only do so through a finely threaded silk cloth; for it would be a crime for a male to gaze upon the face of the Sultana, in health or sickness'⁽²⁸⁾.

What are the consequences of breaching the medical secret is unknown; legal norms, detailing them were not published. Most likely, in accordance with other known breaches of medical practice in the XIXth century, the guilty party was to pay a fine or not receive salary for a period of time^(29,25,30,31). The first law specifically implementing both the universality of the medical secret for healthcare providers and punishment for breaches of confidentiality is the Romanian Penal Code from 1864 that states: Art 305: 'Doctors, surgeons and apothecaries, midwives and all other persons who art, after their profession, holders and keepers of secrets entrusted, if they should disclose them, but for occurrences when the law requires such revelation, shall be punished with imprisonment for one to six months and a fine of 100 to 500 lei'⁽³²⁾. One may easily identify the source of this article⁽²³⁾, as it is similar even in the sums paid as fine.

Medical confidentiality does not seem to include scientific publishing. Thus, a regulation for managing settlements of the Bucharest Hospital Entropy and 'St. Spiridon' Entropy from Iasi, from 1868

stated that 'The medical college shall gather from meeting protocols and scientific observations, the most interesting material, which shall be published at the end of the year along with a general and statistical report on all settlements in the respective administration'⁽³³⁾. As a result, doctors were allowed to use information about their patients, in public, without a prior consent. Not only physicians held scientific meetings; Felix described in his 'History of Hygiene' that midwives also meet every two or three years and discuss the latest trends in caring for the mothers and their children⁽⁴⁾. In these meetings the medical secret was absent, the name, occupation, and other personal data about the patients were freely exchanged.

Conclusions

Medical confidentiality in Romanian Principalities, even if it has specific elements, like the almost complete absence of regulations or etiquette regarding the medical secret, is highly influenced by French and Ottoman culture.

The most preeminent regulations regarding medical secret belong to Midwifery institution, being implemented 30 years before the law regulating it for all medical disciplines.

Knowing what are the origins of the medical confidentiality (and medical ethics in general), may lead to a better understanding of the way ethical principles are implemented in today's clinical practice. ■

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