

Opinion no. 7 of 13 July 1998 on access to health care

Request for an opinion of 15 April 1997, from Mrs C. Saintes, Chairperson of the local Ethics Committee of Clinique St. Jean in Brussels,

worded as follows:

“We are uncertain about the approach to be taken with respect to people who do not have any Belgian or foreign social security cover and who are in very precarious situations (homeless persons, political refugees in the process of applying for an official status, people ordered to leave Belgian territory but still residing on it). Since our clinic is located in the centre of the city, these situations occur on a regular and increasingly frequent basis.

While emergency care is provided without hesitation when the lives of these patients are in danger, what should be done when the emergency has passed, and how should we view these people who go from a reception structure to an emergency ward without ever being able to pay their bills?

This is not just an economic and political issue, but also a medical ethics issue.

Has your committee already considered this complex issue and could you assist us in our discussions?”

1.A.

The Ethics Committee of St. Jean hospital in Brussels asked a question on the approach to be taken with respect to people who need medical care but do not have Belgian or foreign social insurance.

In its response, the Advisory Committee on Bioethics affirms that it is fundamentally immoral to refuse medical care to people who need it. Neither the insolvency of the patient, nor the illegality of his or her presence on Belgian territory, are sufficient to justify such a refusal. The response to any patient’s vulnerability remains the primary value to be taken into account in achieving the fairness required in the provision of health care. The status of a foreigner, irrespective of the reason for his or her presence in Belgium, cannot negatively impact the provision of medical care.

1.B.

This position taken by the Advisory Committee on Bioethics is firstly motivated by support for the values expressed through the guarantee, set out in the Belgian Constitution (Art. 23), of the right to medical care as a fundamental right - a human right -, as well as the obligation imposed by the Belgian Code of Medical Ethics (Art. 5) on a doctor to care for all his or her patients with the

same conscientiousness, irrespective of their social status, their nationality, their beliefs, their reputation and his or personal feelings about them. Added to this is Belgium's ratification of various international conventions such as the Constitution of the WHO of 22 July 1946 (Preamble), the International Covenant on Economic, Social and Cultural Rights of 19 December 1966 (Art. 12), the European Social Charter of 18 October 1961 (Preamble, part 1, point 13) and the United Nations Convention on the Rights of the Child of 20 November 1989 (Art. 22 to 25 inclusive).

As such, it is clear that access to medical care is a prerequisite for human existence with dignity. Ethics relating to access to care require that it is provided nationwide with the same fairness to all, in the same way that the Convention on Human Rights ensures the enjoyment of rights and freedoms without any discrimination based in particular on gender, race, colour, religion, political or other opinions, national or social background, the fact of belonging to a national minority, birth, wealth or any other circumstance.

At the federal and international level, the Belgian State has freely committed to making the necessary arrangements for every person on its territory to be able to enjoy optimal physical and mental health.

Secondly, the Committee is basing itself on the principle of solidarity, on which social security law is based. With this in mind, medical resources, including pharmaceutical resources, must be unconditionally provided to all those who need them and who are present on Belgian territory.

II.A.

The Advisory Committee on Bioethics welcomes the fact that lawmakers anticipated its recommendation and established a general right to medical care through the recent adoption of the Royal Decree of 16 April 1997 on measures to extend the right to enhanced health insurance cover to other categories of entitled persons, pursuant to Articles 11(1) and 49 of the Law of 26 July 1996 (Belgian Official Gazette of 30 April 1997).

These are children receiving increased family allowances due to their disability, as well as people entitled to:

- the minimum full or supplementary means of subsistence;
- social assistance of an identical amount;
- guaranteed income for the elderly;
- a disability allowance.

Also to be welcomed are the recent measures (Royal Decree of 25 April 1997, Belgian Official Gazette of 19 June 1997 and the Royal Decree of 29 December 1997, Belgian Official Gazette of 31 December 1997) that extend and facilitate access to health insurance through the abolition of residual systems, the access amount and the six-month waiting period, as well as through the introduction, for certain categories of persons, of automatic access to the general system.

II.B.

The Committee nevertheless regrets the fact that the social assistance to be provided to foreigners illegally residing on Belgian territory is limited by the organic law on public social assistance centres (Art. 57 redrafted several times) to only *urgent* medical care, despite the relatively flexible interpretation permitted by the Royal Decree of 12 December 1996.

The concept of urgency, which must be broadly interpreted, cannot be a cause of discrimination. It is important, in health care, that human solidarity is applied without restriction.

Thus, the Committee considers that even an explicitly broader interpretation of the concept of urgency is insufficient to meet the ethical requirements of unconditional access to medical care. Indeed, it is not always possible, at the initial examination, to get an idea of the urgency of a condition or the seriousness of a medical issue. It must be possible to respond to each justified request for medical assistance without the individual care provider being obliged to verify the urgent nature of the request.

II.C.

Pending an adaptation of Art. 57, §2 of the organic law on public social assistance centres and of the Royal Decree of 12 December 1996 to suit this recommendation, the Committee urges that the broader and more accurate application of the underlying legislation be accelerated through the better provision of information to health professionals and through easier access to care for both Belgian and foreign patients.

It in fact appears that the application of the legal provisions leaves something to be desired, especially in the outpatient medical sector, because, on the one hand, private doctors are not abreast of the regulations, and, on the other hand, certain public social assistance centres are not very cooperative or have very heterogeneous patient assistance practices.

II.D.

In order for the implementing measures proposed to adequately reflect practical reality and to provide appropriate information to citizens, the Committee considers it essential that a white paper be prepared on the quantitative and epidemiological, cultural and structural aspects of access to care. The following points in particular should be addressed in it: the determination of the number of insolvent patients that present themselves, the complexity of the legislation, the status of the hospitals accessed, the nature of the care, the proportion of patients cared for or turned away, the cost of the medical care and the scope of the contribution from the Emergency Medical Care Fund and the Special Assistance Fund.

A detailed description of the obstacles encountered by persons located on Belgian territory in accessing health care should encourage the political authorities responsible for health care and social affairs to do more to shoulder their responsibilities.

III.

The practical and financial aspects of this ethical standpoint can be assessed in the light of the white paper being sought.

In any case, the Committee is aware that the application of this ethical principle calls for concrete measures inspired by distributive justice with respect to the distribution of the burden and the financing of medical care for people who are insolvent and uninsured. This distribution must be carried out between all the persons and institutions concerned.

The opinion was prepared in a 97/3 select committee made up of:

Co-chairpersons	Co-rapporteurs	Members	Member of the committee
E. Eggermont	X. Dijon	A. André	A. Van Orshoven
Fr. Thys-Clément	E. Guldix	G. Binamé	
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Druyts and D. Vanderslijcke ("Steunpunt Mensen zonder papieren" non-profit organisation)

The working documents of the 97/3 select committee - question, individual contributions from members and experts, reference documents consulted, minutes of meetings, report - are kept in the form of 97/3 Annexes at the Committee's documentation centre, where they may be consulted and copied.
