



# **The Passionate Art with Living Flesh and Medical Fidelity: Coding Ethics for Surgeons**

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## **Abstract**

*Who is a proficient surgeon? The inventions in modern surgery bring different answers to the question. In the traditional sense, the practice of surgery is supported by three pillars namely the technical skills of the surgeon (techne), his knowledge (episteme) and the capacity to make judgments (phronesis). It is axiomatic that in the purview of medicine, medical ethics have been recognized. 'Medical ethics' particularly concern about the doctor-patient relationship. The paper focuses on the 'surgical ethics' which form a part of medical ethics. The main objective of this paper is to study the scope of the surgical ethics which are applicable in the context of modern surgery. The author has analyzed the surgeon-patient relationship and the nature of it. As the last objective, the author has analyzed the ethical issues and the importance of developing surgical ethics. The methodology adopted by the author in this paper is purely qualitative in nature and the content analysis of secondary sources of law. Secondary sources of law include the texts, publications, journal articles. In the conclusion, the author suggests to develop the ethical framework to strengthen the surgeon-patient relationship and proposes to develop a separate code on surgical ethics to Sri Lanka.*

**Keywords:** Surgeon, Ethics, Medicine, Patient, Fidelity

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## Introduction

Performing a ‘surgery’ is an art to handle with living flesh.<sup>1</sup> The successful completion of a surgery is the competence of the surgeon whose technical capability, knowledge and the skillfulness of making judgments are at the zenith. In the view of the French Poet Paul Valery, ‘All of the science in the world cannot make an accomplished surgeon. It is the doing that consecrates it’.<sup>2</sup> ‘Professional Competence ‘is the habitual and judicious use of communication, knowledge, technical skills, reasoning, emotions, values and reflection in daily practice for the benefit of the individual and the community being served’.<sup>3</sup> Thus, a proficient or a competent surgeon is equipped with the knowledge and skills to comply with appropriate operative procedures. In addition to this, his / her medical fidelity is recognized. Medical fidelity is concerned with ethics. The term ‘medical fidelity’; a basic ethical principle which is involved in the regulation of the professionalism of surgeons. It simply stands to the prioritization of the interests of patients than that of other persons.<sup>4</sup> ‘Ethics’ form the basis for the decision making on the fact whether what is right or wrong. Among the ethics discussed in the different kind of disciplines, ‘Medicine ‘is dealt with the medical ethics which deeply discuss the moral aspects pertaining to doctor- patient relationship.’<sup>5</sup> The surgical practice is a combination of technology, evolution, resources and it necessitates the development of surgical ethics. The existence of surgical ethics as a separate section of medical ethics is worth

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1 Cardenas D, ‘Surgical ethics: a framework for surgeons, patients, and society’ (2020) 47 *Revista do Colégio Brasileiro de Cirurgiões* <<http://dx.doi.org/10.1590/0100-6991e-20202519>> accessed 23 March 2023

2 *Ibid* [1]

3 Epstein RM, ‘Defining and Assessing Professional Competence’ (2002) 287(2) *JAMA* 226 <<http://dx.doi.org/10.1001/jama.287.2.226>> accessed 03 February 2022

4 Hui, E.C. (2005) ‘The patient-surgeon relationship. Part II: Medical fidelity as morality and law’, *Asian Journal of Oral and Maxillofacial Surgery*, 17(4), pp. 210–216. doi:10.1016/s0915-6992(05)80014-7. accessed 03 February 2022

5 *Ibid* [1]

for an academic discussion. The objective of the paper is to present a legal and ethical analysis on surgical ethics. The author's perception is to impart the legal and medical communities with an academic exposure on the legal and ethical framework of modern surgery. The author has discussed two basic research questions in this paper namely the scope of the surgeon- patient relationship and the developments in ethical framework pertaining to modern surgery.

### **Methodology**

Methodology adopted in the paper is purely qualitative in nature and the author has perused primary and secondary sources of law to develop the paper into an analytical. The review of literature is significant throughout the paper.

### **Review of literature**

As the paper is developed on the legal research methodology, the review of literature is of predominance. The main purpose of adhering to the review of literature is to get an understanding about the methodologies adopted by other authors in the course of their work. This has been supportive in the identification of pitfalls faced by the previous researchers in adopting such methodologies. Additionally, literature supported in the shaping the research problem. This stands to an instance where the literature or the secondary sources of law that the author perused clearly reflect the subject area. Thus, such an elaboration results in the conceptualization of the research problem clearly. The contextualization of research findings has become convenient in the process of reviewing literature due to the fact that, such a review facilitates the deep comprehension of the work done by the researchers of the field of interest and provides the author with the appropriate knowledge about the loopholes and gaps in the field.

## Doctrinal Methodology and Content analysis

The doctrinal or library based approach which can be used in the research which are theoretical nature.<sup>6</sup> A theoretical research can either be a simple research or a deep research which has more logic.<sup>7</sup> The content analysis comprises of two levels of analyses.<sup>8</sup> ‘The first level analyses the manifest content of texts and documents by statistical methods’ and the second level analyses the ‘latent content of the text and documents’.<sup>9</sup>

## Results and Discussion

### Surgeon and Patient; What Type of A Relationship?

Surgery or the surgical therapy which is life threatening and invasive in nature has shaped the surgeon-patient relationship.<sup>10</sup> This perception highlights two basic requirements from each party where it is essential for the patient to trust the surgeon and the latter must adhere to ethical actions. The surgeon-patient relationship as a bond which is dependent on communication, patient satisfaction, trust and decision making.<sup>11</sup> This further emphasizes in the research that, the surgical performance is not a convenient task for the persons who embark on it.<sup>12</sup> In other way, Surgery is viewed as an ethical practice; ‘each surgeon should have a moral compass in their

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6 Salim Ibrahim A, Zuryati Mohamed Y and Zainal Amin A, ‘*Legal Research of Doctrinal and Non-Doctrinal*’ (2017) 4(1) International Journal of Trend in Research and Development 493 <[www.ijtrd.com/papers/IJTRD6653.pdf](http://www.ijtrd.com/papers/IJTRD6653.pdf)> accessed 24 January 2023

7 Ibid [6]

8 Seuring S and Gold S, ‘Conducting content-analysis based literature reviews in supply chain management’ (2012) 17(5) Supply Chain Management: An International Journal 544 <<http://dx.doi.org/10.1108/13598541211258609>> accessed 2 May 2023

9 Ibid [8]

10 Axelrod DA, ‘Maintaining Trust in the Surgeon-Patient Relationship’ (2000) 135(1) Archives of Surgery 55 <<http://dx.doi.org/10.1001/archsurg.135.1.55>> accessed 4 April 2023

11 Jannu A and Jahagirdar A, ‘Surgeon-patient relationship’ (2021) 2 Advances in Oral and Maxillofacial Surgery 100071 <<http://dx.doi.org/10.1016/j.adoms.2021.100071>> accessed 4 April 2023

12 Ibid [11]

armamentarium to effectively guide their actions'.<sup>13</sup> This elaborates on the fact that, it is essential for the surgeons to demonstrate their competency and diligence in the performance of a surgery.

The significance of surgeon - patient relationship is the uniqueness of the procedure involved in it. The unique features of the process of surgery are the pain or the hurt before it heals invasiveness and the penetration through the body of the patient, decision making in uncertain circumstances with complications and consequences.<sup>14</sup> Thus in a medico-legal sense, the relationship between a surgeon and a patient is contractual in nature. However, the essence of such a bond is fiduciary as the patient imposes a certain degree of trust on it.

The contract so formed is dependent on the trust and confidentiality.<sup>15</sup> Thus, a surgeon should always respect the autonomy of the patient.<sup>16</sup> In addition to this, surgeon-patient relationship is buttressed by the medical informed consent law. The surgeons should have the skill proficient in art and medicine and the relationship should be based on the trustworthiness.<sup>17</sup> A proficient surgeon should have the talent in understanding the ethical problems involved in the process of a surgery with the capacity to exercise judgment in the course of ethical decision making.<sup>18</sup>

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13 Ferreres AR and Patti M, 'Ethical Issues in the Introduction of New Technologies: From Mis to POEM' (2015) 39(7) World Journal of Surgery 1642 <<http://dx.doi.org/10.1007/s00268-015-3067-8>> accessed 7 May 2023

14 Ibid [13]

15 Thejaswini V, Contemporary Surgery, vol 3 (Micro laboratories and Association of Surgeons 2019) <[www.researchgate.net/publication/332072679\\_Ethics\\_in\\_Surgery](http://www.researchgate.net/publication/332072679_Ethics_in_Surgery)> accessed 4 March 2023

16 Ibid [15]

17 Ibid [1]

18 Ibid[1]

## **Psychology of surgeons; a grave issue to be considered?**

The psychology of surgeons is an imperative aspect in the context of surgical practice.<sup>19</sup> The performance of a surgery has a tendency to bring out negative mental consequences on a surgeon. If further elaborated, a post-operative complication of a surgery can result in psychological impact on surgeons.<sup>20</sup> This provides testimony to the fact that, the surgeons become the second victim of such complicated events.

## **Proficient surgeon and the characteristics**

Pellegrini's tenets elaborated on the characteristics of a competent surgeon.<sup>21</sup> Thus, the surgeon is expected to endow with good clinical skills and the surgical judgment, good technical skills and expertise in the performance of operative procedures and the practice of humanism, moralism and ethics.

## **Types of surgeries in the modern world**

As Royal College of Surgeons specifies there are different types of surgery that exist in the world.

- a) Open surgery - The type of surgery which is common among the patients and is characterized by the staples and stiches to close the incisions.<sup>22</sup>
- b) Keyhole surgery-The surgery perform on the skin of the patient through small incisions by use of a fabric optic light source. The insertion of instruments to the fabric optic light source facilitates the surgery and this procedure considered as less traumatic to the patient.<sup>23</sup>

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19 Ibid [11]

20 Ibid [11]

21 Ibid [1]

22 *Types of surgery, Royal College of Surgeons*. Available at: <https://rcseng.ac.uk/patient-care/having-surgery/types-of-surgery/> (Accessed: 25 March 2023).

23 Ibid [22]

- c) Laparoscopic surgery- Almost resemble a keyhole surgery and predominantly used in the contexts where abdominal issues are concerned.<sup>24</sup>
- d) Microsurgery - Surgical procedures involve with the use of magnifying devices and extremely small instruments which are delicate in nature. Microsurgery is predominantly involved in the operation of tiny structures namely the veins, arteries, bones and nerves of the human body.<sup>25</sup>
- e) Cosmotic surgery - The surgery which a person chooses to undergo with the expectation of getting the appearance changed. The reason behind the performance of such a surgery is not necessarily medical in nature.<sup>26</sup>

### **The birth of ‘Surgical Robots’.**

The recent development in the purview of robotics is the involvement of surgical robots in different operative procedures. ‘Surgical Robots’ are machines perform complex surgical tasks in a master-slave configuration system.<sup>27</sup> There are different classifications among the surgical robots. The main classification is between the autonomous industrial robots that are supportive in the fulfillment of a greater extent of work without the intervention of a surgeon.<sup>28</sup> The second classification is dealt with the robots that are supportive to the surgeons and perform the task of assisting.<sup>29</sup> In addition to this, there is a classification namely the internal, external and mixed robots.

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24 Ibid [22]

25 Ibid [22]

26 Ibid [22]

27 Graur S and others, ‘Surgical Robotics-Past, Present and Future’, *New Trends in Medical and Service Robots, Mechanisms and Machine Science* (Springer, Cham 2017) <[www.researchgate.net/publication/318708869\\_Surgical\\_Robotics-Past\\_Present\\_and\\_Future](http://www.researchgate.net/publication/318708869_Surgical_Robotics-Past_Present_and_Future)> accessed 21 April 2023.

28 Ibid [27]

29 Ibid [27]

- a) External Robots - Perform surgical ventures on the surface of the patient's body such as Acrobot, Cyberknife etc.<sup>30</sup>
- b) Internal Robots - Perform surgical ventures inside the body of the patient such as endoscopic capsules.<sup>31</sup>
- c) Mixed Robots - In this process, one segment is placed inside the patient's body and simultaneously, outside the body of the patient. Example: Neuro Mate, da vinci.<sup>32</sup>

## **'Medical Ethics' and the importance**

'Medical Law' is a legal discipline which involves the regulation of the relationship between the patient and medical personnel.<sup>33</sup> This regulation is pursuant to the legal norms and general practice of medicine. Further, the elaboration further signified the fact that, medical law and ethics are complimentary in nature.

As the Code of Medical Ethics presented by the American Medical Association (AMA) defines, the patient - physician relationship as a clinical encounter which is fundamentally a moral activity and arises from the care to patients with the expectation of alleviating poverty. The relationship is based on trust. This definition is further buttressed by an ethical responsibility to prioritize the welfare of the patient over the self-interest. A physician is bound to serve the interests of the patient and the relationship is solely based on the mutual consent.

## **Patient's autonomy as a core principle**

The patient's autonomy and the respect for it are core principles in

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30 Ibid [27]

31 Ibid[27]

32 Ibid [27]

33 Ivanović S and others, 'Medical Law and Ethics' [2013] Acta medica medianae 67 <<http://dx.doi.org/10.5633/amm.2013.0310>> accessed 03 April 2023.



the process of interaction in healthcare. 'Every adult human being of sound mind as a right to determine what shall be done with his own body and he/ she has the right and responsibility to make healthcare decisions'.<sup>34</sup> This simply stands to an instance where the people are making own decisions and no one is to interfere in such a process. The process of decision making by the patient should be based on the information.<sup>35</sup> This is based on the right of a person to receive information.

## Medical Informed Consent Law

Infliction of a force on a person without his/ her consent is considered as 'Battery'.<sup>36</sup> This arises in an instance where there is no lawful justification for the act committed. There are two main categories of the 'consent' namely:

- a) Implied Consent - This is a consent which has not been written in any document but there is a legally binding nature.<sup>37</sup>
- b) Express Consent - This is a type of consent which is mentioned in distinct and explicit language. The express consent can be divided into two namely oral or written. Oral consent is basically directed towards the minor examinations and therapeutic procedures. The obtaining of the oral consent is supplemented by the presence of a witness. Contrarily, the 'written consent' involves the process of guaranteeing the patient.<sup>38</sup>

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34Sakellari E, 'Patient's autonomy and informed consent' (2003) (13) ICUS NURS WEB <[www.researchgate.net/profile/EvanthiaSakellari/publication/241752332\\_Patient's\\_autonomy\\_and\\_informed\\_consent/links/0a85e52f4ffec906a7000000/Patients-autonomy-and-informed-consent.pdf](http://www.researchgate.net/profile/EvanthiaSakellari/publication/241752332_Patient's_autonomy_and_informed_consent/links/0a85e52f4ffec906a7000000/Patients-autonomy-and-informed-consent.pdf)> accessed 05 May 2023.

35 Ibid [34]

36 Sareen R and Dut A, 'Informed Consent in Medical Decision Making In India' (2019) 1(1) Journal of Counselling & Family Therapy 30 <<http://doi.org/10.5281/zenodo.2597154>> accessed 24 March 2023.

37 Ibid [36]

38 Ibid [36]

The informed consent is one of the dominant doctrines in the context of patient - physician relationship.<sup>39</sup> This is identified as a concept rooted in the fundamental principles of medical ethics and human rights law. The purview of informed consent into different types of areas namely:

- c) Informing the patient - the right to receive information is considered as one of the legal and ethical entitlements. Before undergoing any medical/ therapeutic procedure, the patient must be informed about the nature of it and the physician has a simultaneous obligation to provide correct information.<sup>40</sup>
- d) What to inform? - In the case of *Canterbury v. Spence*, the information which should be given by a physician to a patient includes, the illness and its nature, an elaboration on the nature of the treatment, that they are going to administer, a risk and benefits analysis, the pain and complications of the treatment, the existing alternatives, the possibility of getting it successful and the experience and qualifications that, the staff possesses.<sup>41</sup>
- e) How to inform? - Providing information is not sufficient, if it is not done in a way which becomes comprehensible to the patient. Such information should be imparted in a comprehensible and an understandable language.<sup>42</sup>
- f) To what standard shall the physician inform? - This is dealt with two main standards namely the physician standard and the patient standard. The physician standard is signified in the case of *Salgo*. The basis of the case revealed the fact that, a physician becomes liable and considered as breached the

39 Man H, 'Informed Consent and Medical Law', Legal and Forensic Medicine (Springer-Verlag Berlin Heidelberg 2013) <[www.researchgate.net/publication/278649612\\_Informed\\_Consent\\_and\\_Medical\\_Law](http://www.researchgate.net/publication/278649612_Informed_Consent_and_Medical_Law)> accessed 31December 2022

40 Ibid [39]

41 Ibid [39]

42 Ibid [39]

duty, when he withholds the information to a patient. The significance of this liability is that, such information has the potential to support the patient in giving an intelligent consent by the patient to the proposed treatment.<sup>43</sup>

- g) What is the standard of the patient? - Simultaneously, the law accepts the 'objective patient standard'. The standard identifies the fact that, there is a reasonable, objective patient to whom the physician should impart information to make a reasonable decision.<sup>44</sup>
- h) Exceptions to the disclosure - It is axiomatic that, the physician has an ethical and legal obligation to impart patients with correct and relevant information about a treatment.<sup>45</sup>

Therapeutic privilege is considered as one of the grounds on which the provision of information to a patient can be withheld.<sup>46</sup> This situation arises in instances where it is reasonably believed by the physician that, the providing of information to the patient would make him upset and it would make it unable for him to make a rational decision over the treatment. This further reveals the fact that, such a disclosure would become harm to the patient himself/ herself. *Cobbs v. Grant*<sup>47</sup> explained therapeutic privilege as a '*disclosure need not be made beyond that required within the medical community when a doctor can prove by preponderance of the evidence he relied upon facts which would demonstrate to a reasonable man the disclosure would have so seriously upset the patient that the patient would not have been able to dispassionately weigh the risks of refusing to undergo the recommended treatment*'. This signifies an instance where the physician is relieved from the liability or entrusted with the privilege of not informing the

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43 Ibid[39]

44 Ibid[39]

45 Ibid[39]

46 Ibid [39]

47 8 Cal. 3d 229, 502 P.2d 1, 104 Cal. Rptr. 505 (Cal. 1972)

patient about the condition and the proposed treatment. A privilege prevents the patient from **overreaction and excessive desperation**. The principle on ‘Beneficence’ forms the basis of the therapeutic privilege.<sup>48</sup>

A patient has a right to give an informed consent and simultaneously the right to withdraw the same.<sup>49</sup> This is an absolute right where the patient is allowed to withdraw consent in the inception or in the course of a treatment with or without a reason. This should be done by communicating the specific decision of withdrawing to the physician involved. The right of refusal, if further elaborated, states that the patient has a right to refuse the treatment.<sup>50</sup> The right to ‘informed consent’ symbolizes the authorization of the patient in the continuation of the treatment. Right to refusal has a simultaneous importance as the patient can reject the diagnosis and the proposed treatment.

### **What is the Bolam Test (Reasonable Doctor Test?)**

In this test, it was held that, ‘...a doctor cannot be held liable for the negligence if he acted according to the practice accepted as proper by a responsible body of medical men skilled and specialized the particular art..’

### **Canterbury v Spence (Reasonable patient Test?)**

The patient has a right to know all the material risks and the physician has a main obligation to disclose all the risks associated with the treatment. If the doctor has not complied with it, that amounts to medical negligence.

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48 Ibid [39]

49 Ibid [39]

50 Ibid[39]

**Rogers v. Whittaker**<sup>51</sup>

The relevant medical professional being an ophthalmic surgeon failed to disclose to the patient that, the vision of her left eye would be damaged as a result of the surgery to the right eye. The court was of the view that, the surgeon was guilty of negligence and it was emphasized that, the standard care of disclosure should be decided by the court and not the medical profession.

**Smith v. Tunbridge Wells**<sup>52</sup>

A rectal prolapse surgery was performed on a young person without informing him of the threats of impotency and bladder dysfunction. In the perspective of the court, risk incurred was remote but still the surgeon is liable for the conduct of negligence.

**Beneficence and Non-Maleficence**

Beneficence and Non-maleficence are considered as the fundamental principles in the context of clinical practice.<sup>53</sup> The basis of these principles is to promote the wellbeing of the patients and restrain from causing harm or exposing the patients to harm. Beneficence is considered as a foundational ethical principle in the context of the medical field.<sup>54</sup> ‘Non-maleficence’ is enshrined in the moral intent of abstaining from causing harm or injury to another. The amalgamation of the concepts of the beneficence and non-maleficence signifies the responsibility of a medical professional to not inflict harm or evil and also ought to prevent harm or evil to remove harm or evil. Further an obligation is imposed on the

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51 (1992) 175 CLR 479

52 (1994) 5 Med LR 334

53 Singh JP and Ivory M, ‘Beneficence/Nonmaleficence’, The Encyclopedia of Clinical Psychology (University of South Florida 2015) <<http://dx.doi.org/10.1002/9781118625392.wbecp016>> accessed 23 March 2023.

54 Bester JC, ‘Beneficence, Interests, and Wellbeing in Medicine: What It Means to Provide Benefit to Patients’ (2020) 20(3) The American Journal of Bioethics 53 <<http://dx.doi.org/10.1080/15265161.2020.1714793>> accessed 09 May 2023.

medical professional to promote good.

## **Surgical Ethics; the way forward**

It is axiomatic that, the surgical culture is in need of a formalized ethical behavior. However, there is less open discussion on the category of surgical ethics. The predominant consideration of surgical ethics is dealt with the virtues of surgeons.<sup>55</sup> ‘Virtues’ possessed by the surgeons are of different facets namely the punctuality, perseverance, kindness and teamwork.<sup>56</sup> The developed virtues of surgeons should be based on the capacity of a surgeon to make a good judgment or the practical wisdom. The community, whether it is law or medical has a doubt about the aims of surgery. However, it is certain that, the ultimate aim of a surgery is not the surgical technical performance. This signifies the fact that, a surgery should be performed for the best interest of the patient with a proportionate care. The highlighted feature of a surgical procedure is that, it causes the bodily penetration of the patient with the use of incisions, sutures and cuts. The use of such procedures apparently demonstrates a breach or a violation of bodily integrity of the patient. This is *prima facie* contrary to the Hippocratic principle ‘*primum non nocere*’; *first do no harm*. However, if such a body penetration is imperative to heal the patient, it is necessary for the surgeon to separate the soul and body. The body of the patient can be considered as an ‘object’. The object can be healed and the soul can be respected without causing damage. The surgical innovations or the techniques introduced with the passage of time, may satisfy the surgeons but not address the interests of the patients.<sup>57</sup> The era commenced in the 21st century necessitates the ‘surgeon’ to be competent. Thus, a surgeon is expected to be proficient in

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55 Ibid [1]

56 Ibid [1]

57 Ward C, ‘Ethics in surgery’ (1994) 76(4) Ann R Coll Surg Engl 223 <<https://pubmed.ncbi.nlm.nih.gov/8074381/>> accessed 3 April 2023.

clinical skills, expert decision making in the field of surgery and technical skills.<sup>58</sup> The competence is further nourished by the solid ethical atmosphere.<sup>59</sup> Thus, the core of surgical professionalism is established on ‘ethics’. Surgical decision making is comprised of two main facets namely ‘how to treat’ and ‘why to treat’. ‘How to treat’ is an aspect that emerged in the purview of surgical science. ‘Why to treat’ is related to ethics.<sup>60</sup> All the surgeons are expected to carry a moral compass in their hands to guide their own actions.

Surgeons frequently confront responsibility, uncertainty, Fallibility, Confidence and Humility. ‘Responsibility’ is an experience which the surgeons undergo the ethically difficult situations as a part of their professional life. Such ethically difficult situations are dramatic and tragic in certain circumstances.<sup>61</sup> In the view of Surgeons, they have been confronted with the very challenge of learning to live with the unpredictable consequences of their lives.<sup>62</sup> Further, the practice of surgery is considered as more specific and responsible than the other fields of medicine.<sup>63</sup> In addition to the responsible nature of the surgical venture, there is an inherent uncertainty. The surgeons in their professional framework are uncertain about the disease condition of the patient, the survival of the patient, the complications which are fatal and serious in nature, and the quality of life of the patient after the performance of surgery. This uncertainty has the effect of making surgeons more petrified and clueless. Facing the reality is considered as the most serious challenges that a surgeon would face. One of the main duties of a surgeon is to make the patient’s condition

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58 Ferreres AR, Surgical Ethics: Principles and Practice (Springer 2019)

59 Ibid [58]

60 Ibid [58]

61 Torjuul K, Nordam A and Sørli V, ‘Ethical challenges in surgery as narrated by practicing surgeons’ (2005) 6(1) BMC Medical Ethics <<http://dx.doi.org/10.1186/1472-6939-6-2>> accessed 30 April 2023.

62 Ibid [61]

63 Ibid [61]

better. The fallibility concerns with the surgeon's identification of limitations of surgery, errors which will incur and the surgeon's inability to alleviate the sufferings of the patient. The significant aspect in the professionalism attached to surgery is the 'confidence' that the surgeons have. The main focus of the surgeons is on the curing of patients. In the process of exercising the art of surgery, the surgeon's confidence is getting increased with the workable solutions that he would find amidst the clinically and ethically difficult circumstances. The better performance of the surgery is dependent on the courage that the particular surgeon has on the convictions and the personal ethical values. The simultaneous focus is on the fact of humility. This specifies that, the surgeons are not in a position to govern the human conditions or in other words, he is in a position to postpone death but not perfectly save the life of the patient.

### **The Sri Lankan Context**

The errors of judgment and the negligence of a surgeon will result in the morbidity and mortality. In Sri Lankan context, most of the surgeons were accused of surgical errors and such errors have caused the death of patients. Thus, the liability is extended to the hospital staff. In the year 2013, a 47 years old husband and the daughter claimed damages from a private hospital in Colombo for the death of a female patient aged 38 years. The ground of such a legal action was an error incurred in the course of surgery of an ovarian cyst.<sup>64</sup> However, there is a doubt in existence on the availability of a clear and a comprehensible code of surgical ethics in Sri Lanka. The Medical Council of Sri Lanka by its guideline on the ethical conduct for medical and dental practitioners introduces a concept called 'Good Doctors' The guideline states '*Patients*

64 'Durdans Hospital Sued For Medical Negligence And Keeping Guardians In Custody' (asianmirror.lk, 15 August 2014) <<https://asianmirror.lk/news/item/2742-durdans-hospital-sued-for-medical-negligence-and-keeping-guardians-in-custody>> accessed 05 December 2023.



*need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, honest and trust worthy, and act with integrity.*' The guideline has specifically balanced the two aspects namely the surgical performance and skill' and the other facet is the ethical facet.

## **Conclusion**

The surgical ethics are considered as a part of the Medical ethics which have been expanded in a wide purview. The duty of a surgeon towards the patient is considered as specific and comparatively responsible than the other fields of medicine. The reason for this recognition is the fact that, it being an art or an expertise that surgeons possess to deal with living flesh of humans. The surgeon - patient relationship is dependent on the trust, patient satisfaction and the solidity of decision making. A surgeon's performance at its zenith for the best interest and wellbeing of the patient creates the medical fidelity. However, the modern surgery is full of technological advancements. Surgical Robots assist human surgeons in the performance of surgery. The technologically enveloped surgical procedures specifically bring out ethical implications and challenge the professionalism of surgeons. This creates the necessity to develop separate surgical ethics codes specially by considering the legal aspects such as medical informed consent law. In the context of Sri Lanka, the surgeons are often being subject to allegations on surgical errors and there is no separate code on surgical ethics that can be found to govern them. As a country which faces rapid development in the field of medicine, it necessitates the codification of separate guidelines on surgical ethics.