

Medical diagnosis : opting for expertise

Reason: concerns about various kinds of alternative medical treatments

At regular intervals, concerns crop up in public and political life about certain kinds of alternative medical treatments and those offering such treatments and in whom people place their trust, often blindly. This raises the question whether individuals are sufficiently protected. Should the government do more perhaps? And if so, what? A common denominator among recent incidents in alternative health care that caused considerable alarm would seem to be the key part played by the medical diagnosis. The diagnosis made is either called into question or repudiated, even though it is the diagnosis that usually determines what treatment options are available. A diagnosis is therefore also crucial in determining what possibilities a patient can choose from. Would it not be better if making a diagnosis were to be classified as an intervention that may only be carried out by a qualified professional (qualified intervention) in the Individual Health Care Professions Act (Wet BIG)? The Ministry of Health, Welfare and Sports has put this question to the Council for Public Health and Health Care (RVZ). This would restrain the liberty of action care providers have in this respect and contravening this ban would become a punishable offence.

Incompetent medical diagnoses cause a variety of problems

Problems can arise if an incorrect diagnosis is made or a correct diagnosis is rejected. This is firstly a problem for the individual patient. It goes without saying that an incompetent or incorrect diagnosis can be harmful because the patient is then not given the correct therapy or because treatment starts too late. Secondly, an incompetent diagnosis may constitute a problem in that current liberal legislation offers patients insufficient protection in that regard. Thirdly, an incompetent medical diagnosis can lead to irrational decision-making. Medical diagnoses not made in accordance with the rules of medical science and common practice result in treatments the effects of which are not proven but the costs of which are funded, under pressure, from collective resources. Fourthly, such incidents always cause considerable public alarm. There are no figures on how often incorrect diagnoses are made because data is not collected systematically. It is clear, however, that the consequences can be serious. A rough estimate based on the number of people consulting alternative medical therapists suggests that over one million diagnoses are made each year, thus indicating the scope of this potential problem. 'Potential' because not every contact with alternative medicine poses a risk.

Would designating a diagnosis as a qualified intervention be a solution? Including medical diagnoses as qualified interventions in the Individual Health Care Professions Act would mean that unqualified persons would be punishable by law if they made a medical diagnosis where there is no need to do so. In such cases, the government would be required to stipulate which qualified persons are authorized to make medical diagnoses. There are several legal strings attached to a regulation of this kind however, as the example below shows.

For several days already, Mr X has had a painful blister on the corner of his mouth and he decides to go to the pharmacist on the corner. The pharmacist listens to Mr X and has a look at the offending blister, and immediately identifies the affliction. 'Don't let the name shock you, sir, but what you've got is called herpes. No, it's nothing to worry about, it's a harmless infection, just a cold sore. All you have to do is dab it twice a day with an antiviral cream. Here's a tube for you. It will clear up in a few days. If the blisters are still there after a week, it would be wise to consult your GP.'

Source: Duchatteau, D.C. Omschrijving en afbakening van het begrip medische diagnose (Description and definition of the term medical diagnosis). In: Medische diagnose; achtergrondstudies (Medical diagnosis: background studies).

If the medical diagnosis were to be listed as a qualified intervention in the said Act, the pharmacist in the example above would be liable to punishment. Is that what we want? These are not the kinds of situations the minister was referring to when he asked the Council whether patients should be better protected. But it would be one of the side effects of designating a medical diagnosis as a qualified intervention. Defining the term medical diagnosis in such a way that it is immediately obvious from which actions patients should be protected, with or without penal sanction, is a difficult exercise. Cancelling out a side effect explicitly invited by the minister, namely the harmful effect of designating a medical diagnosis as a qualified intervention on the rearrangement of tasks, should not be too difficult. It would be a matter of assigning powers to a wider range of professional groups. For instance, not only doctors, but ambulance staff also have diagnostic skills.

It is not the minister's intention to create avoidable entry obstacles by including medical diagnoses as qualified interventions in the Act. Nor should inclusion unnecessarily curb further introduction of market incentives in the health care sector. If making a diagnosis is risky, the Council considers it correct that new providers in the sector meet the same quality requirements. Meanwhile, there are also developments in the field of diagnostics leading to more and more 'medical' diagnoses being made outside the regular health care system. The unnecessary use of ultrasound in pregnancies is a case in point. Consumers must realize that other rules apply in these cases. Even so, there are reasons to doubt the effectiveness of the measure of designating diagnoses as qualified interventions as suggested by the minister. The problem lies not so much in the medical diagnosis as such but in the subsequent treatment route, be it conventional or alternative. Moreover, the penalty for performing a qualified intervention without having an appropriate qualification is low, at most three months' imprisonment. It is classed 'merely' as a minor offence, not as a criminal act. Would that be given priority in prosecution policy? The question is also whether a ban can be enforced. Who is to know what takes place in doctor's surgeries if patients do not disclose anything?

Are there any other solutions?

Other measures can be considered to protect people from incompetent diagnoses, such as providing information and publicity, all of which are effective. In the aftermath of several sensational cases, there are fewer cancer patients now on controversial diets. The starting point must be a clear differentiation between conventional and alternative medicine. For instance, patients must be aware if conventional health care practitioners or organizations offer alternative therapies. And it should go without saying that if they so wish, consumers can opt for an additional care package from their health insurance fund that does not include alternative therapies, something that only few insurers offer at present. In addition, it is possible to amend existing legislation, for instance by adapting expertise specifications in the Individual Health Care Professions Act, making minor offences major ones and imposing heavier punishments. Better use could be made of existing enforcement powers if the Public Prosecutions Department (OM) and the Dutch Health Care Inspectorate (IGZ) were to join forces and act more resolutely. As the problem is not innate in the medical diagnosis itself but rather in what follows on from there, another possibility might be to designate the act of questioning a diagnosis, prognosis and treatment plan made by a dentist or a doctor as a 'qualified intervention'. This would better protect patients from care providers, conventional or alternative, who turn aside the professional opinion of a doctor or dentist. Those who do so

would be acting in contravention of the law. There are disadvantages to this proposal, however.

Recommendation

The friction between individual freedom of choice and patient protection in respect of medical diagnoses that is inherent in the Individual Health Care Professions Act was and is not easily eliminated. The Council was obliged to note that at this point there is no evidence of a pressing, large-scale or serious public health problem. Still, there is a social problem and that this problem is a growing one cannot be ruled out either. The Council also found that to date, too little use has been made of existing sanctions. This has to do with problems in terms of supervision, proof and detection. So long as there is no evidence of the existence of a pressing, large-scale national health problem, the Council recommends to begin with opting for informing the public, consultation with parties in the field and research, followed by optimization and use of existing legal instruments. New legal measures should be taken only as a last resort.