

February 1965

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### Recommended Citation

Doyle, James C. (1965) "Ethical and Legal Disciplinary Problems Facing Medicine Today," *The Linacre Quarterly*: Vol. 32 : No. 1 , Article 15.

Available at: <http://epublications.marquette.edu/lnq/vol32/iss1/15>

# Ethical and Legal Disciplinary Problems Facing Medicine Today

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The medical profession continues to strive for ethical and scientific excellence.

In 1847 at its first meeting the American Medical Association adopted a Code of Ethics for the profession. Part of this code reads: "Medical Ethics as a branch of general ethics must rest on the basis of religion and morality. They comprise not only the duties, but also, the rights of a physician."

I believe the present principles of medical ethics are twofold: first, those ethical principles which protect the public and advance the profession; and second, those ethical principles which foster the patient-physician relationship.

Striking evidence surrounds us that the people of this state and nation are vastly more medically conscious than ever before. On every side there seems to be increasing patient and public interest in the problems of adequate medical care. And we in the profession must express to the people our eagerness to develop and utilize whatever medical and social mechanisms are necessary and desirable and readiness to discipline errant members of the medical profession who misuse them or the people's trust.

We have been cognizant for some time at all levels of medicine that the profession needs and requires regulation and continuing maintenance of high standards. However, in recent years we have not made sufficiently visible the importance of this problem.

In the past few months signs on the

legislative horizon have arisen in several states which would involve the Government more deeply in the practice of medicine—in its cost, availability, and most importantly, in its quality. In our own State of California legislative interim committee hearings are now being held on the vital subject of medical discipline.

In general, problems in California pertaining to the breaking of the law come under the jurisdiction of the Board of Medical Examiners. These relate to performing an abortion, narcotic addiction, alcoholism, income tax evasion and mental illness. Ethics offenses traditionally come under the county medical society and the California Medical Association.

Between these two broad areas—jurisdiction of the Board of Medical Examiners for legal offenses and the ethics procedures of medical societies—there remains a significantly important "gray area of concern." In this "gray area," acts are committed which may be contrary to medicine's high ideals of practice yet are not technically violations of either the law or stated ethical principles. These cases represent a most perplexing problem to the responsible members of the profession.

A most frequent complaint concerns fees. Obviously, misunderstandings of this kind arise less often if, prior to service, fees are discussed with the patient and a mutually satisfactory arrangement made.

Also, in this "gray area" we find incompetence due to age, intemperance,

mental and emotional instability and moral turpitude.

An *ad hoc* committee of the California Medical Association has been studying the problems of medical discipline in California. Several exploratory meetings have been held between this committee, members of the State Board of Medical Examiners, representatives of county medical societies, legal counsel and the CMA Committee on Legislation.

With the purpose of encouraging stronger physician self-discipline, the *ad hoc* committee proposes several important points. Among these are:

1. *Probationary Powers.* The committee believes that the State Board of Medical Examiners should be given expanded probationary powers to deal with physicians who have been brought before it. Such powers might specifically provide, where applicable, for additional medical training, for diagnosis and treatment of those not physically or mentally competent to practice medicine, and other appropriate rehabilitative factors.
2. *Mental Illness.* This is a sensitive and complex problem. At the present time, a physician who is voluntarily admitted or committed to a state hospital for mental illness has his license automatically suspended. On the other hand, the license of a physician who is voluntarily committed to a private institution is not affected. This thorny problem might first be approached by giving the State Board of Medical Examiners authority to make inquiry and impose necessary restrictions on the license—of course, after proper hearings.
3. *Medical Staff Evaluation.* It could be considered unprofessional conduct for a physician to treat or pre-

scribe regularly in patients in a general hospital in which the medical staff fails to provide for periodic evaluation of the standards of medical care rendered.

4. *Unprofessional Conduct.* Also included in possible provisions is that unprofessional conduct might be involved in violation or attempted violations of any section of the Medical Practice Act or of Board regulations. These could include repeated acts or course of conduct which amount to gross negligence, gross incompetence, gross immorality, or the commission of acts which involve dishonesty or corruption.
5. *Regional Subcommittees.* The State Board of Medical Examiners should have the authority to establish regional subcommittees of the Board throughout the state. Such committees might be given authority to review cases assigned to them by the Board. Such hearings would be conducted in accordance with the Administrative Procedures Act with a referee presiding. After the hearings the subcommittee would prepare a recommended decision in such form that it could be adopted or modified by the State Board.

In a further effort to keep our medical house in order, the California Medical Association and its component societies, cooperating with the California Hospital Association, established the Guiding Principles for Physicians and Hospitals. More than 125 hospital medical staffs, on individual request, have been visited and inspected by carefully chosen teams of physicians from local and state levels. These teams advise on the medical staff strong points, and shortcomings, if any. The results have been exemplary and of benefit to hospitals, physicians,

patients and the entire community. The emphasis, of course, is always on self-discipline at each medical-hospital level. After all, no one is more qualified to judge the quality of medical care than physicians. The basic principles of good medical care and professional conduct have long been established.

These survey teams make certain that each hospital maintains active and thorough staff review committees which appraise and supervise qualifications, medical records, tissue and surgical procedures, medical procedures and utilization.

The climate of the times presents a bewildering picture of ethical principles in all phases of our society. There have been certain assumptions—which in my judgment are erroneous—that ethics "cannot be taught," that "character cannot be materially changed," and that they "can be taken for granted."

The first intimate contact that a physician has with medical ethics is in medical school. In an effort to determine the attitudes of medical educators and what orientation students were receiving, a questionnaire was sent to deans of all medical schools in 1961 by the Medical Disciplinary Committee of the American Medical Association. Thirty schools made no attempt to cover the field of medical ethics and discipline with any type of formal lecture. The prevailing opinion among the deans was that this material could not be adequately taught, but was better presented by precept,

by example of the faculty, and by the practicing physicians with whom the student comes in contact. However, they felt that better screening methods are needed to eliminate potential delinquents. For example, some schools have respected alumni interview each prospective candidate.

I believe medical schools should have a course in medical ethics, the medical practice act and professional relations in their senior year. This should be reviewed during internship. The Los Angeles County Medical Association, and many other county societies, presently have an orientation program for future members. Further, it might have a salutary effect to have graduate students attend at least one Board of Medical Examiners session.

Physicians become disciplinary problems through lack of knowledge of the laws and ethics of the profession. The individual who has no knowledge of these rules is going to make mistakes. Among the deficiencies which exist within organized medicine—medical societies and specialty groups—is apathy, substantial ignorance, and a lack of a sense of individual responsibility. It would seem indicated to have one staff program a year set aside for this very purpose to alert, inform and stress ethics, morality, discipline and professional relations.

The public must be assured that the medical profession is doing its utmost to maintain an active, aggressive, and continuing interest in medical disciplinary matters.

