

LAWYERS AND DOCTORS WORKING TOGETHER – A FORMIDABLE TEAM

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Doctors and lawyers are learning to put aside their preconceived notions of each other's profession and work together for the mutual benefit of their patients/clients. In the last five years, medical-legal partnerships in hospitals and health facilities have grown significantly throughout the country. These collaborations have proven effective in combating selective socio-economic impediments to health, relieving the anxiety that often accompanies a chronic health condition, and improving quality of life for vulnerable adults and children. This new partnership benefits patients, hospitals and both of these professions.

Aged Antagonisms

In 2005, *The New Yorker* published a cartoon in which Hippocrates is addressing a group of medical students. "First," he says, "treat no lawyers¹" – a mantra which some doctors took too seriously when a group of them refused to treat lawyers except in emergency situations.² This cartoon captures the distrust and distaste for lawyers that pervade the medical profession. However, this sentiment is not one-sided. Lawyers, too, seem to share a similar aversion for doctors. A number of factors contribute to the mutual distrust and antagonism between the professions. The most apparent factor is undoubtedly and understandable malpractice suits. Physicians resent the intrusion of lawsuits into the practice of medicine and blame the high price of malpractice insurance on lawyers. According to Dr. Robert Gillette, many doctors "tend to be cynical of the tort system, seeing it more as a means of support for neurotic patients and avaricious lawyers than as a device for deterring bad medical practice."³ Lawyers have their

¹ Lee Lorenz, *Hippocrates Off the Record*, *The New Yorker*, Mar. 7, 2005, available at <http://www.cartoonbank.com>.

² Scott Shepard, Mississippi Doctors Putting Trial Lawyers On Do-Not-Treat List, *Memphis Business Journal*, July 5, 2004, available at <http://memphis.bizjournals.com/memphis/stories/2004/07/05/story3.html> (reporting that a group of Mississippi doctors refused to medically treat lawyers except in emergency situations).

³ Robert D. Gillette, M.D., *Malpractice: Why Physicians and Lawyers Differ*, *Journal of Legal Medicine*, Oct. 1976, at 9, 11.

own set of grievances.⁴ Complicated professional jargon hinders open communications between both sides.⁵

This inter-professional antagonism runs deeper than mere conflicts involving malpractice suits; it stems from doctors' and lawyers' fundamental "lack of understanding of each other's methods, values, and roles."⁶ Attorneys generally work to safeguard their clients' autonomy and liberty. Doctors seek to protect and care for the health of their patients.⁷ While often interrelated, in reality these may be conflicting goals.

A good example of this dichotomy is a scenario in which a doctor deems a mentally ill patient to be in need of institutionalization, although the patient refuses to consent to treatment.⁸ Despite the doctor's responsibility and judgment, a lawyer's role under these circumstances would often be to *prevent* such institutionalization in the interests of the client's autonomy.⁹ Situations like this one lead lawyers to "view doctors as authoritarian" and doctors to "view lawyers as purveyors of abstract rights shorn of context."¹⁰ Hence, physicians and attorneys can easily clash while pursuing what they believe to be in the best interests of their mutual client/patient.

Professionals on both sides fail at times to appreciate and acknowledge the authority of the other to make decisions that have implications for their respective domains. Attorneys cite "[e]go, arrogance, and an elite attitude" as the leading challenge when working with doctors and claim that physicians behave "as if they could do the attorney's job better than the attorney," even though doctors may not have any legal or business training.¹¹ Physicians, on the other hand, bristle at lawyers'

⁴ See generally Paul E. Fitzgerald, Jr. *Doctors, Lawyers Evaluate Each Other in New Study: Building Trust, Opening Communication Lines Could Improve Doctor/Lawyer Relationships-Doctors, Lawyers and Lawsuits*, *Physician Executive*, Mar. 1 2002, available at <http://www.thefreelibrary.com/Doctors,+lawyers+evaluate+each+other+in+new+study:+Building+trust...-a084236559>. As discussed in this section, Fitzgerald reveals that one study found that attorneys consider physicians' "[e]go[s], arrogance and...elite attitude[s]" as challenges in interacting with them professionally. In addition, attorneys explained that they are frustrated by doctors' lack of "business knowledge" as well as their attempts "to 'practice law.'"

⁵ David Keller, M.D. and Rebecca Kislak, *Collaborating to Serve*, *International Medical News*, Mar. 1, 2005, at 8, available at <http://download.journals.elsevierhealth.com/pdfs/journals.elsevierhealth.com/pdfs/journals/1097-8690/PIIS1553321205702843.pdf>.

⁶ Benjamin J. Naitove, Note and Comment, *Medicolegal Education and the Crisis in Interprofessiona[n] Relations*, 8 AM. J. L. and Med. 293, 298 (1982).

⁷ Peter D. Jacobson, J.D., M.P.H. and M. Gregg Bloch, M.D., J.D. *Improving Relations between Attorneys and Physicians*, *JAMA*, Oct. 26, 2005, at 2083, 2084.

⁸ *Id.*

⁹ *Id.*

¹⁰ Peter Margulies, *Cognitive Politics of Professional Conflict*, 5 Harv. J. Law & Tech. 25, 33 (1992).

¹¹ Paul E. Fitzgerald, Jr. *Doctors, Lawyers Evaluate Each Other in New Study: Building Trust, Opening Communication Lines Could Improve Doctor/Lawyer Relationships-Doctors, Lawyers and Lawsuits*, *Physician Executive*, Mar. 1 2002, available at <http://www.thefreelibrary.com/Doctors,+lawyers+evaluate+each+other+in+new+study:+Building+trust...-a084236559>.

seemingly matter-of-fact attitude towards bringing malpractice claims and resent having their integrity and professional competency challenged.¹²

Professional Perspectives

Fundamental differences in educational training also shape the dramatically contrasting perspectives of each profession. In essence, lawyers are trained to look at a black and white situation and see the gray, while doctors are trained to find the black and white from a gray situation.¹³ Law students quickly learn to employ adversarial methods, using facts to expose the gray areas of disputes that support their argument. In the legal world, lawyers learn to work with vague standards, such as “beyond a reasonable doubt” and “more likely than not.”¹⁴

In contrast, doctors use scientific methods to fit symptoms into a definite diagnosis followed by an established remedy; they work with what Dr. Stillman refers to as “clear clinical pathways, defined goals, and objectivity.”¹⁵ By graduation, medical students “grow accustomed to needing explanations, rules, and formulas... [They] need to know that [they] are doing something for a reason. Not just any reason, but a proven, nonbiased, well-executed, double-blind reason.”¹⁶ With such polar opposite methods of thinking, it can be difficult for doctors and lawyers to agree on how to resolve patient/client issues that span the medical and legal domains.

Medicine and Advocacy

Historically, physicians have been advocates in addressing public health issues within their communities.¹⁷ While some medical professionals argue that the profession as a whole has drifted from this role, they recognize that physician leaders, including the American Medical Association (“AMA”), have begun to advance a “renewed sense of professionalism,”¹⁸ which encourages doctors to devote more of their time to public service and advocacy.¹⁹ For example, in the “Declaration of Professional Responsibility: Medicine’s Social Contract with Humanity,” the AMA declares that as physicians, they commit themselves to:

Work freely with colleagues to discover, develop, and promote advances in medicine and public health that ameliorate suffering and

¹² *Gillette*, supra note 3, at 9-10.

¹³ Martin J. Stillman, M.D., J.D., A Difference of Degrees, *JAMA*. Sept. 3, 2003, at 1135, 1136.

¹⁴ *Id.* At 1135.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Russell L. Guren, M.B.B.S., Steven D. Pearson, M.D., M.Sc, and Troyen A. Brennan, M.D, J.D., M.P.H., *Physician Citizens-Public Roles and Professional Obligation*, *JAMA*, Jan. 7, 2004, at 94,94.

¹⁸ Harold C. Sox, M.D., ed. *Medical Professionalism in the New Millennium: A Physician Charter*, *Annals of Internal Med.*, Feb. 5, 2002, at 243,243.

¹⁹ Russell L. Guren, M.B.B.S., Steven D. Pearson, M.D., M.Sc, and Troyen A. Brennan, M.D., J.D., M.P.H., *Physician-Citizens-Public Roles and Professional Obligation*, *JAMA*, Jan. 7, 2004, at 94, 94.

contribute to human well-being... [They additionally commit themselves to a]dvocate for social, economic, educational, and political changes that ameliorate suffering and contribute to human well-being.²⁰

Although this Declaration overarches the medical profession, a variety of other factors influence and inform a physician's professional values in terms of advocacy, including the educational context in which they are trained and the environment of their residency practice. The real or perceived value of advocacy within the medical profession varies widely and individually.

Increasingly, there is a demand for advocacy training in the context of traditional medical education and training. The origins of this demand are multiple and include an ever more complex social and health network that patients and doctors must navigate in order to meet healthcare and other basic needs. In February 1999, the Accreditation Council for Graduate Medical Education, responsible for the accreditation of post-graduate medical training programs within the United States, recognized the importance of access to non-medical services and systems-based practice when it included as part of its accreditation requirements "advocating for quality patient care and assisting patients in dealing with system complexities."²¹ Similarly, the American Academy of Pediatrics' residency review requirement includes addressing the multicultural dimensions of healthcare, community experience and increasing "emphasis on the importance of the psychosocial, legal, economic, ethical, and cultural aspects of care."²²

The medical profession recognizes that patients need and deserve appropriately trained experts to address the social determinants of health. Lawyers in medical-legal partnerships are poised to play this role, since their training is focused on advocacy within legal, regulatory and administrative schemes.

Medical-Legal Partnerships Change the Dominant Paradigm

If we are to encourage physicians to incorporate screening, diagnosis and "treatment" for the social, economic and environmental factors impacting health, it is only natural that attorneys should serve as treatment specialists. While physicians are ideally placed, and perhaps uniquely so, to observe the health effects of socio-economic factors or detect when such factors compromise their patients' care, it is a lawyer who can offer the perspective and resources needed to understand patients' medical-legal problems, their rights and options, and where they can find help. Together doctors and lawyers are a formidable team.

²⁰ *Declaration of Professional Responsibility: Medicine's Social Contract with Humanity*, para. 6 and 8 (American Medical Association, 2001), available at <http://www.ama-assn.org/ama/up;oad/mm/369/decoprofessional.pdf>.

²¹ *Program Requirements for Residency Education in Child and Adolescent Psychiatry*, available at http://www.acgme.org/acWebsite/downloads/RRC_progReq/405pr07012007.pdf.

²² Holly Mulvey and Ethan Alexander Jewett, *Pediatric Residency Education: A Survey of the Future of Pediatric Education II (FOPE) Project*, at <http://www.aap.org/gme/ResEdData/ppt.#257>, 19.

There are a number of medical-legal partnerships nationally that have successfully wedded the two professions for the benefit of vulnerable patient populations. Two of the most established programs, the Medical-Legal Partnership for Children in Boston and LegalHealth in New York, serve as prototypes for this innovative “marriage.”

The Medical-Legal Partnership for Children (“MLPC”) at Boston Medical Center and Boston University School of Medicine (formerly the “Family Advocacy Program”) was founded by Chairman of Pediatrics Dr. Barry Zuckerman in 1993. MLPC was the answer to Dr. Zuckerman’s frustration as a pediatrician treating vulnerable children and families who presented significant social and poverty issues that impacted their health and well-being. Dr. Zuckerman realized that many of the problems that impacted health had legal remedies, and that it made sense to have a lawyer as part of the treatment team to ensure that families’ basic needs – for food, housing, healthcare, education and safety – were met. There are now over seventy sites across the country that have modeled their programs on MLPC, and the momentum of this movement continues to grow.

LegalHealth, established in 2001, is a division of the New York Legal Assistance Group. It provides free legal services onsite in thirteen hospitals throughout New York City. LegalHealth’s mission is to serve adults and children with serious health concerns and to train healthcare professionals about the legal issues affecting their patients. It assists over 2,500 clients and trains over 1,500 healthcare professionals yearly. Physicians associated with the program, such as Dr. Stewart Fleishman, Director of Supportive Services at Continuum Cancer Centers at Beth Israel and St. Luke’s-Roosevelt in New York, believe that the skill sets of the physician and attorney are complementary as advocates for all patients, especially, but not limited to, the underserved with life-limiting illnesses like cancer. The professional discrepancies “melt away” when patients’ and families’ needs come first. “The combination,” says Fleishman, “is more powerful when harnessed together for a common cause.”

According to Dr. Lauren Smith, National Medical Director at MLPC, a significant proportion of the health issues that patients bring to the doctor’s office are affected by circumstances outside the traditional office/medical realm. Because many of these problems are not framed as health issues, patients do not recognize the doctor as having the expertise necessary to fix them. It is crucial for the doctor to make the connection, for example, between the patient’s asthma and poor housing conditions. Then, with the help of lawyers, doctors can direct patients to appropriate legal and social resources to fully address their needs. Thus, physicians must take a proactive role in exposing these medical-legal problems, and advising patients on what steps to take next and what doctors can further do to help.

Conclusion

These new partnerships have broken through the traditional disrespect and distrust to create a new work environment that has been productive and gratifying – and a revelation – to all involved. Medical-legal collaboration not only works but is the new, improved route to complete healthcare. Doctors learn to identify nonmedical impediments to healing and refer patients to their lawyer colleagues who remove those obstacles in order to promote health and well-being and prevent exacerbation of disease.

Working together, doctors and lawyers can effectively address problems that neither one alone can do as well. When a patient is entitled to Supplemental Security Income and cannot pay for his medication without it, a landlord refuses to remove asthma triggers that are in violation of local sanitary codes, or a cancer patient needs a reasonable accommodation in the workplace, including time off from work in order to keep chemotherapy appointments, a lawyer can get it done. Patients are not the only beneficiaries – collaboration helps hospitals as well. Advising eligible patients to sign up for Medicaid or clearing away private insurance thickets can secure payments for care that might otherwise go unreimbursed.

Dr. Rand David, Director of Ambulatory Care and Primary Care, Internal Medicine Program, at Elmhurst Hospital, a New York City public hospital, says, “LegalHealth has allowed our doctors to recognize and address a broader range of issues being faced by our patients, and it helps us bridge the gap that has historically separated doctors from lawyers. Now we can work together and broaden the treatment options available to our patients.”

It is time for doctors and lawyers to recognize the benefits of working together. Collaboration allows each profession to perform to the best of its ability on behalf of those who need us most. We really are on the same side.

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Dr. Zuckerman founded three noted programs that use the pediatric setting to raise the standard of service for children in need. The Reach Out and Read Program ("ROR") promotes child development and early literacy for young children in primary care settings. The Medical Legal Partnership for Children integrates legal advocacy and policy to improve the effectiveness of care. Health Steps is a national program emphasizing child development and a two-generational model of care. He may be reached at 617-414-7424 or Barry.Zuckerman@bmc.org.

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