

Issues of Life

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Truth telling

- ▶ A physician must be truthful.
- ▶ The medical record is maintained not only as history for the physician but also as an explanation to others as to one's thought as the case evolves.
- ▶ The patient also has the right not to be told either about the diagnosis or the consequences of the diagnosis with or without proposed treatment options.
- ▶ This is a cultural issue that must be respected.
- ▶ It may not interfere with treatment or patient management.

Physician boundaries

- ▶ The physician-patient relationship is one of trust.
- ▶ It is built on empathy.
- ▶ It is also a power relationship
- ▶ The physician's authority is properly guarded in the service of one's responsibility to patients. As the person with the moral, legal, and economic responsibility for the consequences of decisions and outcomes, the physician must be recognized as the ultimate decision-maker.
- ▶ Authority is not in the service of ego.
- ▶ Appropriate consultation is a recognition that all pertinent knowledge does not reside in oneself.

Physician boundaries

- ▶ One can have social interactions with patients because of mutual interests.
- ▶ But one cannot have sexual contact with patients.
- ▶ One cannot unduly influence the patient in non-medical matters such as becoming the patient's heir
- ▶ The physician cannot prescribe medication without having examined the patient
- ▶ A physician cannot treat a family member as the emotional relationship may cloud judgment
- ▶ However, the physician can be the family member's advocate
- ▶ The physician cannot divulge confidential information

Duty to report

- ▶ There is a moral and a legal duty to report suspected abuse whether to children, the elderly, or to spouses
- ▶ There is a moral and a legal duty to report an impaired physician, physician misconduct, negligence, or deviation from a standard of care
- ▶ A physician is generally relieved from liability for reporting abuse or negligence or the like
- ▶ Unfortunately many complaints of negligence or deviation from a standard of care arise because of personal interests.

Duty to report

- ▶ The one reporting must balance the limited information on which the decision to report is based against the entraining of a judicial process which inexorably leads to imposition of severe punishment
- ▶ Usually the matter is taken up by the hospital in which the report has been made
- ▶ Should one report publication fraud?
- ▶ What if it involves a Nobel Prize winner?

Duty to report

- ▶ If any action is taken against the physician which may affect hospital privileges, that action must be reported to the medical board
- ▶ It is rare for a hospital not to take action once a report has been made as the failure to act may cause civil liability for the hospital
- ▶ It is common for any such report or action to lead to a civil action for damages against the physician

Duty to report

- ▶ 1 in 2 physicians will be named in a malpractice action at least once in the physician's career.
- ▶ Physicians infrequently lose malpractice cases.
- ▶ Generally the insurance company will settle if the settlement is likely to be less than what it would cost to litigate.
- ▶ Thus, it must be regarded as the cost of doing business.
- ▶ There are only a handful of physicians against whom multiple malpractice actions have been brought; they account for the overwhelming majority of payments

Duty to report

- ▶ In the US, >99% of all criminal charges lead to conviction
- ▶ This is a conviction rate higher than that which was found in criminal cases in Stalin's Soviet Union
- ▶ The standard for a criminal case is “beyond a reasonable doubt”
- ▶ The standard in a civil case is the “preponderance of evidence”
- ▶ A judge may vacate or overturn a decision because it does not meet the standard
- ▶ It rarely occurs in criminal cases as the political ramifications are significant: judges are elected

Duty to report

- ▶ In the US, the “judicial” process employed by boards or agencies only has to meet an “any evidence rule”
- ▶ Thus, if a charge is brought that rule is met
- ▶ It is very rare for a physician charged by a medical board to have those charges dismissed even if it is demonstrated that the board fabricated evidence or suborned perjury
- ▶ One should never speak directly to a medical board but do so only through an attorney

Duty to report

- ▶ If one is disciplined by a medical board whether by reprimand or license suspension, it is almost impossible to have an insurance carrier write a malpractice policy on the disciplined physician
- ▶ Without a malpractice policy in force, it is almost impossible to have hospital privileges
- ▶ While states permit one to practice without malpractice insurance, usually the state demands that one place \$100,000 in escrow in lieu of having malpractice insurance
- ▶ That, however, is generally not acceptable to hospitals

Remedies

- ▶ Physicians with alcohol or substance abuse or sexual abuse problems generally enter a treatment program.
- ▶ They are often permitted to practice under medical/psychiatric supervision
- ▶ If there is a question as to physician competence, there are remedial programs of several months duration which permit an independent body to certify that the physician is competent
- ▶ Physicians convicted of drug diversion or other felony may have their license restored
- ▶ Obtaining malpractice insurance will be difficult

Recap



- ▶ The physician has a responsibility to do no harm including the avoidance of foreseeable, unnecessary harm (non-maleficence) and to act in the best interest of the patient (beneficence)
- ▶ The physician has a responsibility to treat people fairly, to work for the common good, and to provide access to health care (justice)
- ▶ The physician has a responsibility to respect patient autonomy and to respect patient choices even when the physician does not agree

Recap



- ▶ Professional standards across medical disciplines have supported the right to “step away” from providing a service that violates conscience.
- ▶ The right to refuse does not include a right to obstruct.
- ▶ The patient must be informed about the intent to refuse service and alternative courses of action available to the patient.