



Physician Professionalism

Here are some ethical and moral duties young physicians encounter in the new business model of medicine.

BY ZACHARY R. PATERICK, JD, MBA, CPA, AND TIMOTHY E. PATERICK, MD, JD, MBA

Reprinted with Permission from The Journal of Medical Practice Management, Mar/Apr 2019, pgs 316-320 copyright 2019 Greenbranch Publishing, LLC, (800) 933-3711, www.greenbranch.com.

Professionalism is the basis of medicine’s social agreement with society. The contractual relationship between physicians and society demands that the interests of patients be placed above those of treating physicians. It also obliges physicians to set and maintain standards of competence and integrity and to provide knowledgeable and professional advice to society on matters of health and well-being.¹ Physicians must act as a fiduciary to the patient, which means they must place the interests of their patients above all competing interests.

The medical profession is being challenged to meet its fiduciary responsibilities by an eruption in technology, fluctuating market forces, and evolving duties in the ever-changing healthcare delivery system. The exponential transformations across an array of technology and market changes make it a real challenge for physicians to meet their obligations to patients. Indeed, the medical profession is confronted with political, legal, and market forces that challenge physicians to meet their fiduciary responsibility to their patients.

The fundamental principles inherent to physician professionalism include patient welfare; patient autonomy; and elimination of discrimination

in healthcare, whether based on race, gender, socioeconomic status, ethnicity, or religion. Market forces, societal pressures, and administrative exigencies must not compromise the principles inherent in a true physician–patient relationship. Physicians must be sincere and trustworthy with patients and empower them to make informed decisions about their treatment options. Patients’ decisions about their medical

- Integrity in dealings with patients;
- Respect of patient confidentiality;
- Preservation of appropriate personal and financial relations;
- Provision of access to the highest quality medical care;
- Equitable distribution of finite resources; and
- Preservation of trust through never succumbing to conflict of interest for personal or financial gain.

Physicians must act as a fiduciary to the patient, which means they must place the interests of their patients above all competing interests.

care must be paramount, as long as it is ethical for the physician to comply with those decisions and they do not lead to demands for care that is not appropriate given the clinical presentation.²

This article describes physicians’ obligatory professional responsibilities, their medical and legal fiduciary obligations, and how employed physicians caught in a web of ascendant market fundamentalism may be caught between the responsibility to maintain patient primacy and their own professional responsibilities.

Professional Responsibilities

The physician’s professional responsibilities encompass all of the following:

- A commitment to professional competence;

Lifelong Learning

Physicians must be devoted to lifelong learning and maintaining the knowledge and skills they need to provide standard-of-care medicine. Education is crucial in the world of constantly advancing medical knowledge. Appropriate mechanisms must be in place for all physicians to achieve this goal of lifelong learning. All physicians should pursue the opportunity for continuing medical education services to maintain the highest level of competence in their area of practice.

Medical Informed Consent

Medical informed consent is essential to a true patient–physician partnership. Patients must participate

Continued on page 114

Professionalism (from page 113)

in the informed consent process to understand the risk–benefit relationship for the proposed treatment strategy. This understanding is essential, because patients often are psychologically regressed secondary to the realization that they are confronting a

likely to arise when providing information to persons acting on the patient's behalf when the patient is not mentally competent to consent. All physician conversations must be measured and well thought through. The commitment to confidentiality occasionally may be trumped by overarching considerations of public interest.⁴

als, institutions, and systems responsible for healthcare delivery. Physicians, both individually and through professional organizations, must take the responsibility for assisting and maintaining mechanisms to encourage continuous improvement in knowledge and quality of care. Collectively, physicians must attempt to diminish barriers to excellent and equitable medical care. The objective of medical care must be availability of uniform and excellent standard-of-care medicine across all demographics and socioeconomic classes.

Patients must participate in the informed consent process to understand the risk–benefit relationship for the proposed treatment strategy.

life-preserving procedure. Physicians need to participate in the informed consent process to provide patients with the best treatment available by sharing decision-making and limiting any potential for liability.

Medical ethics, common law, and, in many states, codified statutory law mandate the informed consent process. Physicians would be prudent to be knowledgeable in these areas of medical ethics, common law, and statutory law. Physicians need to understand that the consent process is vital to the physician–patient relationship. Whenever patients are injured as a result of medical care, they should be informed immediately because failure to inform patients and families compromises patient and societal trust and confidence in the medical profession. Reporting and analyzing medical errors provides a foundation for developing prevention and improvement strategies and equitable compensation to injured parties.³ Reporting medical errors and injuries is an integral component of informed consent.

Patient Confidentiality

Safeguarding patient confidentiality is imperative in today's world of widespread use of electronic information systems for compiling and storing patient information and data, and the steadily increasing use of genomic information that may affect a patient's ability to obtain insurance and career opportunities. The sanctity of the patient's medical information must be safeguarded. This issue is especially

The Physician–Patient Relationship

The physician–patient relationship is inherently vulnerable because illness causes patients to suffer emotionally and become dependent on an authority figure. Given the patient's intrinsic vulnerability and the dependency that may arise, physicians must remain aware of the importance of never exploiting a patient sexually, or for personal financial gain.

Continuous Quality Improvement of Healthcare Delivery

Improving the quality of patient care must be an essential core value

Just Distribution of Finite Medical Resources

Physicians must ensure the just distribution of finite medical resources. Physicians must provide healthcare that is based on judicious and cost-effective management of limited clinical resources and healthcare dollars. The physician's professional responsibility for equitable allocation of resources requires conscientious avoidance of tests and procedures that are unnecessary and financially driven. The provision of unwarranted medical services exposes patients to risk and expense and limits the available resources for others in true need of those resources. Physicians and organizations—both “for

Safeguarding patient confidentiality is imperative in today's world of widespread use of electronic information.

of every physician. Physicians must be dedicated to continuous improvement in the quality of healthcare provided to patients. This commitment must entail not just maintaining personal clinical competence, but also working collaboratively with all colleagues to increase clinical knowledge, reduce medical errors, increase patient safety, minimize overuse and misuse of healthcare resources, and optimize patient outcomes.

Physicians have an inherent duty to participate in the development of quality-of-care measures. Physicians must be involved in the application of quality measures to assess individu-

profit” and nonprofit—have many opportunities where they could compromise their professional responsibilities by pursuing personal advantage.

Physicians have a duty to disclose conflicts of interest that arise in their professional work. They have a moral and ethical duty to disclose unethical behavior of physicians, organizations, and physicians and organizations acting in concert. Physicians must participate in self-regulation, including remediation and punishment of physicians, administrators, and organizations that fail to meet professional standards.

Continued on page 116

Professionalism (from page 114)

Fiduciary Responsibility of Physicians

The word fiduciary derives from the Latin word for “trust.” The covenant of trust between the patient and the physician is vital to the diagnostic and therapeutic process. It is the foundation of the physician–patient partnership. To facilitate physicians making accurate diagnoses and providing optimal therapeutic recommendations, the patient must trust she can communicate all relevant information about an illness or injury without the physician divulging confidential information. The fiduciary relationship is based on accepted codes of professional ethics.

Historically, the physician–patient relationship was understood based on the principle of benevolence, played out through the doctrine of medical authoritarianism. Medical paternalism has been defined as an action taken by one person in the best interest of another without that person’s consent. The rationale was that the physician alone possessed the knowledge and experience needed to make a medical decision. The idea was that it was therapeutically counterproductive for patients to understand their compromised state of health and the risks they faced because such knowledge would jeopardize, limit, and retard their recovery. Paternalism pervaded the physician–patient relationship until the middle of the 20th century.

Medical paternalism eventually succumbed to notions of patient autonomy as it was determined that patients had the right to make their own decisions. This has evolved to the concept of shared responsibility, in which the physician and the patient jointly exercise decision-making authority.

In 1914, in *Schloendorff v. Society of New York Hospital*, Justice Benjamin Cardozo wrote, “Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient’s consent commits an assault.” His landmark decision marked a radical shift toward recog-

nizing patients’ rights in the physician–patient relationship.

The increased recognition of civil rights in the 1960s permeated and enhanced a range of individual rights, including those of medical patients. The courts ultimately endorsed the position that a physician would be liable if there was failure to obtain informed consent before medical or surgical treatment. In the seminal case of *Canterbury v Spence* in 1972, the court ruled that a physician has a duty to disclose to a patient any material risk associated with a proposed therapy that a reasonable patient would need to hear to make an informed decision. The informed consent requirement marked the turning point in changing the definition of the physician–patient relationship from medical paternalism to patient autonomy.

Today, the pendulum has swung

to form the basis of an intelligent consent by the patient to the proposed treatment.” Subsequent to this ruling, informed consent became an ethical and legal duty imposed upon physicians throughout the United States.

Informed consent, which initially was considered a legal duty imposed by the courts upon physicians, is now considered a fundamental component of healthcare that is incumbent upon and a universal obligation accepted by physicians as part of the doctor–patient covenant. Physicians now have an ethical and legal responsibility to inform patients of the potential material risks and benefits of any proposed treatment before obtaining that patient’s consent to perform a medical procedure, with the patient given the right to make the ultimate decision on the ultimate

Proper healthcare decision-making and management involve detailed communication and exchange of information between patients and physicians.

to a position of shared decision-making. Proper healthcare decision-making and management involve detailed communication and exchange of information between patients and physicians; in which the patient shares his or her symptoms, concerns, personal goals, personal and family history, and lifestyle desires; and the physician shares the risks, side-effects, alternative approaches to care, and potential outcomes. This two-way exchange represents a true physician–patient partnership.

Informed Consent in an Era of Shared Decision-Making

Informed consent is a physician obligation to the patient ethically, morally, and legally. The term informed consent was coined and explained in *Salgo v. Leland Stanford Jr. University Board of Trustees*, where a California Court of Appeals declared in 1957 that “a physician violates his duty to his patient and subjects himself to liability if he withholds any facts which are necessary

course of treatment. The duty of physicians to patients is ethically, morally, and legally sacrosanct. This duty is a critical piece of the professional responsibilities of physicians.³

When There is Too Much Information

In a world exploding with medical information through television advertising and the vast array of telecommunications now available, physicians must know how to respond to informed patients. Physicians often receive requests for treatments that are not medically necessary from patients who have misinterpreted information they have found on the Internet or derived from advertising. Physicians should not lose sight of their prime fiduciary responsibility to promote and protect the best interests of the patient, even at the risk of losing revenue. The law empowers physicians to say no to services that are not medically indicated, an empowerment that serves society well.

Continued on page 117

Professionalism (from page 116)

The Threat to Physician Professionalism

The transformation in autonomy experienced by physicians has been the opposite of that experienced by patients. Patients have experienced a transition from paternalism to autonomous decision-making, whereas physicians have experienced a transition from autonomy to conflict as to who is their fiduciary. Physicians today commonly practice as employees of large corporate medical organizations. Ascendant market fundamentalism pressures the physician to practice as a fiduciary to the organization, not the patient. Employed physicians report to business-trained managers and may be subject to contractual obligations that threaten quality of care, patient safety, and the professional and fiduciary responsibilities they owe patients. The MBA-degreed administra-

tors demand that physicians let the demands of the marketplace trump other goals, because they believe the practices they learned in business school apply equally to the practice of medicine.

medical errors, unethical conduct, and malfeasance. These confidentiality clauses are in direct opposition to the physician's professional responsibility to improve the quality of patient care. The commitment to

Physicians should not lose sight of their prime fiduciary responsibility to promote and protect the best interests of the patient, even at the risk of losing revenue.

In the new era of employed physicians, numerous problematic clauses in their contracts may affect physicians' abilities to meet their professional duties and fiduciary responsibilities.

Confidentiality Clauses

Confidentiality clauses in physician contracts often have the result of hiding quality and safety issues,

quality must entail reducing all medical errors, increasing patient safety, minimizing overuse and misuse of healthcare resources, and optimizing patient outcomes.

Physicians have an inherent duty to participate in the development of quality-of-care measures and application of quality measures to assess individuals, institutions, and systems

Continued on page 118

Professionalism (from page 117)

responsible for healthcare delivery. The objective of medical care must be the availability of uniform and excellent standard of care across all demographics and socioeconomic classes.

Confidentiality clauses may interfere with the mandates of professional responsibility necessary to maintain the fiduciary responsibilities inherent in a physician-patient relationship.⁵

Incentive Clauses

Most physician contracts include productivity incentives, and physicians have been terminated for not meeting these incentives, or for low productivity. These clauses provide inducements for activities that primarily increase employer income and tend to inspire over-treatment. These incentive clauses are in direct opposition to the professional responsibility that physicians must maintain the just distribution of finite medical resources. Physicians must provide healthcare based on judicious and cost-effective management of limited clinical resources and huge financial healthcare dollar deficits. The physician's professional responsibility for equitable allocation of resources requires conscientious avoidance of tests and procedures that are unnecessary and financially driven. The provision of unwarranted medical services exposes patients to risk and expense and limits the available resources for others in true need.^{6,7} Incentive clauses put the just distribution of medical resources at risk.

Referral Restrictions

Referral restrictions may be referred to as "leakage control." Many physician contracts prohibit referring outside the system, which may prohibit appropriate referrals for particular patients, thus decreasing quality of care. Many physician offices have physician navigators who direct the care of patients to specialists within the health system and take control of the referral away from the primary physician. Contractual clauses that prevent referral to the most skilled and elite physicians directly interfere with the professional responsibility of physicians. Physicians must collec-

tively attempt to diminish barriers to excellent and equitable medical care. The objective of medical care must be availability of uniform and excellent standard of care across all demographics and socioeconomic classes.⁸

"Gag" Clauses and Termination without Cause

Clauses that prohibit physicians from revealing quality and safety

physicians, leaving those physicians feeling powerless. The intransigence of these organizations reflects their sheer market dominance. This loss of professional values and fiduciary responsibility to the patient must inspire physician medical/surgical organizations to demand a return of professional values and fiduciary responsibility to the patient. This may require physicians to organize to col-

The ascendant market fundamentalism has pressured physicians to become entrepreneurial businesspersons rather than medical professionals.

problems, medical errors, unethical conduct, and problems with electronic medical records that result in healthcare quality issues and safety issues directly interfere with a physician's professional responsibility.

Termination without cause puts physicians at extreme risk if they stand up for professional responsibilities. Gag clauses and termination without cause are in direct opposition to a physician's professional responsibility.⁹

The Conundrum Physicians Face

Physicians are trapped between professional responsibilities and contractual obligations that limit their ability to meet those professional responsibilities and their fiduciary responsibility to their patients. This conflict is a manifestation of corporate medicine letting the demands of the marketplace undermine the goals of professional and fiduciary responsibility of physicians.

The ascendant market fundamentalism has pressured physicians to become entrepreneurial businesspersons rather than medical professionals. This shift in the physician's fiduciary responsibility to the employer rather than the patient threatens quality of care, patient safety, and physician professional values. It is a daunting time for physicians, patients, and society. Managers of large healthcare corporations may not be willing to meaningfully negotiate the most egregious provisions in the contractual relationship with individual

lectively bargain with uncompromising and unyielding employers. **PM**

References

- ¹ Kirk LM. Professionalism in medicine: definitions and considerations for teaching. *Proc (Bayl Univ Med Cent)*. 2007;20(1):13-16.
- ² Gabbard GO, Nadelson C. Professional boundaries in the physician patient relationship. *JAMA*. 1995; 273:1445-1449.
- ³ Paterick TJ, Carson GV, Allen MC, Paterick TE. Medical informed consent: considerations for physician. *Mayo Clin Proc*. 2008;83:313-319.
- ⁴ Carrese JA, Sugarman J. The inescapable relevance of bioethics for the practicing clinician. *Chest*. 2006;130 (Suppl 6):1864-1872.
- ⁵ Poses RM, Smith WR. How employed physicians' contracts may threaten their patients and professionalism. *Ann Intern Med*. 2016;.165:55-56.
- ⁶ Cassel CK. The patient-physician covenant: an affirmation of asklepios. *Ann Intern Med*. 1996;124:604-606.
- ⁷ Kassirer JP. Managing care: should we adopt a new ethic? *N England J Med*. 1998;339:397-398.
- ⁸ Gonzalez ML, Rizzo JA. Physician referrals and the medical market place. *Med Care*. 1991;29:1017-1027.
- ⁹ Brand GS, Munoz GM, Nichols MG, Okata MU, Pitt JB, Seager S. The two faces of gag provisions: patients and physicians in a bind. *Yale Law Policy Rev*. 1998;17:249-280.

.....
Mr. Zachery Paterick is an Associate at Sidley Austin LLP in Chicago, IL

Dr. Timothy Paterick is a cardiologist at Methodist Hospital, Dallas, Texas; e-mail: tpaterick@gmail.com.