
The Doctor and the Law

1. The medical profession in the new millennium

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Abstract:

It is a difficult time to become a physician in the modern world. Although, our therapeutic armamentarium has never been greater, the pressures on the practice of medicine seem to have increased even more. Physicians talk about 'the coming medical apocalypse' ask whether we are 'helpless' or whether '... being a physician is still fun'?

Scholarly research is undertaken to measure the degree of discontent and dissatisfaction with the practice of medicine. Part of the problem lies in the tangle of conflicting messages physicians regularly hear. Although societal measures of health are improving, the incidence of medical mistakes is said to be unacceptably high. Malpractice litigation is said to target 'bad' physicians and to be a necessary adjunct to the regulatory and professional discipline, yet nearly one in five doctors reports a malpractice claim annually, and one-third to one-half of high-risk specialists face a claim every year. Are they all bad doctors? Plaintiff attorneys say they carefully screen malpractice claim before filing, yet 70-80% of these claims are still found to be without merit. Therefore, it is not surprising that the physician 'angst' is high. Washburn says it plainly enough 'Ask any clinician: it is getting harder and harder to enjoy practicing medicine'. More than one-third says they would probably not choose to enter medical school again. Although 84% of woman physicians in the United States express satisfaction with their career, 31% say they might not choose to be a physician again.

Introduction:

It is a difficult time to become a physician in the modern world. In an era when life expectancy is increasing, major progress has been recognized in the prevention and treatment of treatment of ischemic heart and cerebro-vascular disease, a new generation of biologic therapies is beginning to reward decades of efforts in the battle against cancer, AIDS has become treatable with preventive vaccines entering clinical trials, CT scanning and MRIs have revolutionized our windows into human body, when surgeons can utilize non-invasive operative techniques, and robotic surgery is a reality, when science is now unveiling the genomic abnormalities in a host of human diseases, how can this be? ¹⁻⁷

Although our therapeutic armamentarium has never been greater, the pressures on the practice of medicine seem to have increased even more. Physicians talk about 'the coming medical apocalypse' ask whether we are 'helpless' or whether '... being a physician is still fun'? Scholarly research is undertaken to measure the degree of discontent and dissatisfaction with the practice of medicine. ²⁻⁹

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Medical practice in the new millennium

Before focusing on these important concerns, let us look into the context of medical practice at the onset of the new millennium. Washburn identifies five trends that he argues have brought us to the brink of 'medical meltdown' ¹⁻⁴:

1. Excessive business and legal complexity in the provision of the medical care.
2. Decreased medical spending without reduced demand for medical services.
3. The increasing role of for-profit corporations in changing the traditional emphasis on patient care into concern for shareholder equality.
4. A growing population of an uninsured patients adding to the financial stresses on physicians and health care institutions.
5. Provider demoralization.

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Keeping pace with ever expanding medical knowledge is a daunting task, but physicians must practice 'under significantly expanded legal obligations, face stricter standards of professional accountability for medical negligence, and no longer enjoy exemption from the laws of competition'. Doctors now face criminal penalties for, among other things, inadequate documentation, elder care deemed unacceptable, or erroneous emergency room triage.^{2,4,12-14}

Concern over the rising cost of health care has led to the era 'managed care'. It is difficult to find any constituency that is fully satisfied with this development. Physicians are alternately depressed and enraged at the erosion of their authority in offering professional judgements on behalf of their patients. Doctors across the United States applauded the American Medical Association effort to impose the same malpractice jeopardy on managed care organizations that themselves faced. This 'the enemy of my enemy is my friend' philosophy ultimately foundered with the realization that more litigation was a poor prescription for America's health care system. Physicians came to understand that these lawsuits would not exempt them from their own legal battles, but would instead add another cause of action to the malpractice allegations they already faced.^{15,16}

Governments have made life more difficult for doctors with laws that have reduced medical care spending without taking action to reduce demand for services.

The impact of law and regulation on medical practice:

The legal context of medical practice has changed significantly in recent years. The position of physicians within the legal system is 'neither as lofty nor as protected as it was previously'.^{2,7,15} There are new legal obligations, stricter liability laws, and increased competition. Physicians are expected not to discriminate on the basis of race, national origin, or disability in the selection of patients or the provision of medical care; to participate in emergency care. When part of corporate hospital enterprises; to conform their practices to nationally based professional standard of care; to price their services competitively; and not to use illegal tactics to eliminate the competition.⁷

The medical profession:

Therefore, it is not surprising that the physician 'angst' is high. Washburn says it plainly enough

'Ask any clinician: it is getting harder and harder to enjoy practicing medicine'.⁴ More than one-third says they would probably not choose to enter medical school again.³⁻⁷ Although 84% of woman physicians in the United States express satisfaction with their career, 31% say they might not choose to be a physician again.¹³

The primary cause for this dissatisfaction is not declining income, but decreased autonomy and the sense that the medical practice is no longer the calling it once was.²⁻⁷ There is a major groundswell of comment on the nature of physician-hood, and the meaning of profession.¹⁴ This admirable disclosure illustrates the nature of the pressures of impacting the practice of medicine. In the face of 'perverse financial incentives, fierce market competition, and erosion of patients' trust' physicians are asked to re-emphasize their commitment to the profession of medicine. The three core elements of professionalism are defined as follows¹¹⁻¹⁵:

1. Moral commitment to the ethics of medical practice.
2. Public profession of values.
3. The negotiation of 'social priorities that balance medical values with other social values'.

This process will result in a new social contract and society.

The authors of the proposed Charter of Medical Professionalism also see professionalism as the core of social contract for medicine and are concerned that the pressures of contemporary medical practice are 'tempting physicians to abandon their commitment to the primacy of patient welfare'. They identify the following three fundamental principles¹¹⁻¹⁵:

1. Principle of primacy of patient welfare.
2. Principle of patient autonomy.
3. Principle of social justice.

The latter requires physician advocacy beyond the welfare of individual patients to 'promote justice in the health care system'.¹¹⁻¹⁵ Ten professional responsibilities are also cited:

1. Commitment to professional competence.
2. Commitment to honesty with patients, emphasizing both informed consent, and prompt reporting and analysis of medical error.
3. Commitment to patient confidentiality.
4. Commitment to maintaining appropriate relations with patients such as avoidance of patient exploitation for sexual advantage, financial gain, or other private purpose.
5. Commitment to improving quality of care.
6. Commitment to improving access to care.

7. Commitment to just distribution of finite resources.
8. Commitment to scientific knowledge.
9. Commitment to maintain trust by managing conflicts of interest.
10. Commitment to professional responsibilities emphasizing the individual and collective obligations to participate in processes to improve patient care.¹¹⁻¹⁵

In today's medical legal world, there are no guarantees against unwarranted litigation, and no certain protection against continuing erosion of the doctor-patient relationship. Nonetheless, every constituency in our society agrees on the critical nature of medical services and all want more, not less, access. Ultimately, the practice of medicine is too important, and the men and women who undertake it too estimable, for the system not to balance itself.

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