Physician Health and Professional Secrecy

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How far can the regulation of medicine extend without becoming Orwellian?

Recent revelations of physician behavior with patients under anesthesia have raised new questions of what it means to be a professional.¹ Does unwitnessed behavior, behavior away from the office, or behavior with some expectation of privacy insulate professionals from criticism, or are standards of professional behavior tied to social expectations in every setting? Should the editors of the Annals of Internal Medicine even have exposed the otherwise secret behavior? Perhaps they undermined patient confidence in ways that are more destructive than the behaviors themselves. Physician health programs (PHPs) are among those deeply concerned with the professionalism of their community and balance similar concerns in ways that may be instructive to the debate.

The exposure of unprofessional behavior in an operating room may not immediately look like an opportunity to review physician health, but a closer look raises inevitable parallels. In the same way that surgeons, or any colleagues, may overstep professional bounds, physicians who are “disruptive” or “impaired” may come to the attention of PHPs. Because the consequences of unacceptable or risky behavior can be as difficult to discern in real life as they are clear in the pages of the Annals of Internal Medicine, disagreement over referral, treatment, and monitoring of our physician-colleagues can also be a focus of heated debate.

Professional guidance from the Joint Commission and the American Medical Association is clear that behaviors that affect patient safety and communication among clinical teams must be a focus of physician communities.²,³ And commentators on medical professionalism are clear that positive character traits are necessary to support professional ideals.⁴,⁵ But how far can the regulation of medicine extend without becoming Orwellian? It may not seem fair that behaviors or conversations never intended for the light of day are held to standards of professional scrutiny. It may be tempting, for example, to apply Tarasoff-like language to the question. “The protective privilege ends where the public peril begins,” wrote the California Supreme Court in its famous decision creating the duty to protect.⁶ For the purposes of criticizing or sanctioning physicians acting in an unseemly manner, confidentiality might be expected if the patient is unaware. This would be in keeping with the tolerance of macabre or sick humor in medicine generally, or the frankness of certain settings such as mortality and morbidity conferences where colleagues are expected to share their views freely.

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But does it translate to unprofessional displays that involve other persons, even though they are unaware? Does the element of witnessing or publicity make the difference? Treating anyone as a means to an end, including humor, would seem to violate any number of medical principles. These range from respect for others, to dignity, collaboration, and fiduciary responsibility—that special relationship of trust and confidence that guides all medicine. Indeed, keeping such behavior secret does more to undermine patient confidence than its exposure ever could. It is laudable to overcome the perception of physicians protecting their own and act as the editors of the Annals of Internal Medicine did by publishing the report. Any patient-centered ethic requires nothing less.

At the same time, the author and institution of the report in the Annals of Internal Medicine are anonymous. Is this hypocritical in light of the journal’s effort to expose previously secret behavior?
Does this feed the concern that physicians improperly protect their own? It should not. It is entirely reasonable to assume that an early backlash against the reporter and the institution would do more harm than good. And protecting the whistle-blower is a time-honored tradition in law and governance.

PHPs, too, worry about the behavior of physicians out of sight of patients, from driving under the influence to domestic violence. PHPs are part of a system that monitors and treats physicians with behaviors that arise from illness, stress, or substance use. At the same time, PHPs strive to maintain the confidentiality of monitoring and treatment. As a diversionary process that supports rehabilitation and recovery rather than sanctions in carefully defined cases, PHPs balance responsibilities to physicians, the community, and the profession much as the Annals of Internal Medicine editors did. The balance of exposure and protection is a complex negotiation in the land between monitored physicians and their state medical boards.

In a practice that exemplifies this balance, a number of boards and PHPs refer physicians to the well-known PRoBE program (Professional/Problem-Based Ethics). PRoBE reviews the path that led physicians into monitoring. The failure to recognize personal needs and health, or to balance personal and professional responsibilities, is a common theme among referred physicians. PRoBE recognizes the demands of an unforgiving medical culture but also examines the virtues that define professional behavior. This balance serves to promulgate important community standards while tying the physician's experience to personal growth. At the culmination of the program, participants are asked to re-assess their behavior in light of the professional virtues they identified.

PHPs often succeed by managing the balance of professionalism and confidentiality with the same wisdom as the editors of the Annals of Internal Medicine. With a 75% success rate in one classic study, PHPs restore physicians to practice with a sensitivity to the needs of both individual physicians and the community. Their mission to emphasize treatment and professional growth, while reporting carefully to state boards, can reassure patients and hospitals and simultaneously safeguard physician confidentiality. Evidence of strong physician satisfaction with one of the core PHP interventions—peer support groups—and lower malpractice risk among those who complete a monitoring program are among the outcomes indicating the successful negotiation of a difficult enterprise. It may be clear that PHPs find similar ways to support medical professionalism while wrestling with the very questions faced by the editors of the Annals of Internal Medicine.

Disclosures:
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