Correspondence

Duty to Inform vs. Confidentiality

To the Editor:
I am writing in regard to Dr. Sylvain Fribourg's letter and Ms. Lisa Bloom's response in the last issue of *Law, Medicine & Health Care* [15(3): 161; Dr. Fribourg argued for physicians' duty to inform the contacts of their AIDS patients; Ms. Bloom argued for the patients' right to confidentiality].

I am a firm believer in individual rights. However, in this less than perfect world of not all black and not all white, "No man is an island unto himself." Do not any of the rest of us have rights? Or are rights extended only to those who are being "oppressed," meaning criminals and/or sick people?

I understand all of what Ms. Bloom says about the discrimination and problems when somebody is even tested for HIV, let alone when they test positive. Do I not, however, as a physician, and do not my coworkers and colleagues have the right to know when a patient might put us at risk for catching a lethal disease, when this fact is known? Is there no reasonable way to inform a spouse or *other* sexual partners who might become infected with HIV? And does a woman not have a right to know that if she becomes pregnant there is a 25- to 50-percent chance that her child will get ill and die from AIDS?

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Disciplining Impaired Physicians

To the Editor:
The medical profession has traditionally had an uneviably poor record of disciplining impaired physicians. This lamentable reality is potentially highly problematic for members of an unsuspecting public who may be harmed as the result of inadequate medical care. There is thus a salient need for health policymakers and legislators to establish task forces entrusted with collecting pertinent data, identifying and analyzing attendant issues, and ultimately crafting legislation that responsibly addresses long-festering, aching problems.

Precise data on the number of impaired physicians actively practicing in the country are not available. However, a leading medical-journal editor has estimated that at least 20,000 physicians, for one reason or another, probably should not be practicing medicine; these physicians may be alcoholics, drug addicts, senile, criminals, or simply incompetent.[1] Data on the actual incidence of medical malpractice in the country are similarly imprecise. The scant extant data, however, suggest that the number of medically related injuries vastly exceeds the number of professional negligence suits filed. For instance, a study of records at two hospitals, chosen as reasonably representative of American hospitals in 1972, estimated that 7.5 percent of patients discharged from the two hospitals suffered injury associated with their medical treatment. An estimated 29 percent of the injuries were caused by provider negligence; only about 6 percent of these, however, resulted in a medical malpractice claim.[2]

Malpractice claims affect many doctors. Data from the American Medical Association's 1986 Socioeconomic Monitoring System surveys showed that about thirty-seven of every one hundred physicians had at least one claim filed against them during their careers. Some specialties are at relatively greater risk than others. The survey data showed that 64 percent of obstetrician/gynecologists, 50 percent of surgeons, 39 percent of radiologists, and 36 percent of anesthesiologists had had at least one claim filed against them.[3]

The abundance of lawsuits presents a striking contrast to the paltry disciplinary efforts pursued traditionally by state licensing boards, medical societies, and the medical profession in general. Of the nation's 552,716 physicians, the Federation of State Medical Boards has reported that in 1985 state licensing boards revoked the license of 406. Additionally, 235 physicians had their licenses suspended, 491 were placed on probation, and 976 were "penalized."[4] State and local medical societies similarly have a meager record of calling errant colleagues to task. In 1986, for example, of some 1,700 complaints concerning physicians filed in New York, only five came from medical societies.[5]

The acute failure of the medical profession to appropriately discipline impaired members raises a pivotal question: Why is the profession

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apparently so stymied and ineffectual in removing from practice and disciplining impaired doctors? A partial explanation may be fear of lawsuits. Indeed, there have been instances in which members of state medical boards have had to spend considerable money defending themselves in suits arising over disciplinary actions undertaken by a particular state board.[6]

The federal Health Care Quality Improvement Act of 1986 addresses this concern. This legislation, in general, seeks to promote medical professional reviews by providing peer-review participants with immunity from tort liability for providing information to a professional review body concerning the competence or professional conduct of a physician.[7]

This legislation is not a panacea. In this author's opinion, at least, the vexing problems now afflicting the healthy functioning of the health-care system, particularly the paucity of effectual disciplining efforts, require further legislation at the state as well as federal level.

In their search for responsible legislation, state legislators and pertinent task forces should focus some attention on the following questions: Is the licensing board adequately funded and staffed to fully identify and appropriately discipline incompetent physicians? Are the various state boards unduly limited in pursuing disciplinary cases by state laws that restrict the collecting of necessary information from pertinent sources?

A government closed-claim study has shown that about 80 percent of the malpractice claims closed in 1984 involved an injury occurring in a hospital. These data suggest the desirability of expanded hospital-based risk management programs, intended to educate the hospital staff about better ways of practicing high-quality clinical medicine and, in pertinent instances, the prompt reporting of possible substandard care. State legislators may be wise to carefully probe the feasibility and desirability of enacting legislation mandating the participation of health care providers in risk-management programs as a condition of medical licensure.[8]

Federal legislators should likewise grapple with fresh approaches to old, nagging problems. In the past, a physician licensed in more than one state might have his or her license suspended for incompetence by one state licensing board, then simply relocate to another state. Congress, as well as the medical profession, may thus be well advised to endorse proposed legislative measures intended to protect patients, at an interstate or national level, from physicians who have lost their licenses because of incompetence.[9] The need for sanctions applicable nationwide is compelling.

The vast majority of highly capable physicians should assume a leadership role in advancing legislative measures that may help protect the public from the incompetent actions of some of their colleagues.

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