EYES WIDE OPEN:
A NOT-SO-UNCOMMON MEETING

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The alarm clock goes off in his hotel room at 6 a.m., his usual waking time. But it may as well have gone off hourly, as a full night’s sleep is now only a fond memory since he’d received that certified letter 2 months ago. The letter advised him of a hearing scheduled in Austin to review several serious complaints against him and that his license to practice medicine might be in jeopardy.

Before retiring to bed the previous night, he had again reflected on the day he first thought about being a physician, back in 6th grade, when Dr. Peterson had spoken to his science class about the life of a doctor. He remembered the spark of interest then, and the extra effort he generated from that point on, until the day he graduated from medical school. He remembered vividly how his life changed that day, particularly how years of patience and hard work gave way to a life characterized by greater privilege, impunity, and authority — traditional perks of his chosen profession. But perhaps this mantle of power is to blame for a false sense of security that resulted in him paying a visit to the medical board today.

He gets off the elevator, dressed sharply in a blue pinstripe suit, briefcase in hand, and attorney at his side. In the waiting room that the Texas State Board of Medical Examiners (TSBME) shares with the Pharmacy Board, he encounters several other physicians. Some are holding their diplomas nervously as they wait to take the exam as the last step toward Texas licensure. Others are also nervous, perhaps for reasons similar to his.

After about a half hour, an attorney for the board quietly summons him for the meeting upstairs with a panel consisting of 2 board members, 2 board attorneys, the board’s field investigator who researched the allegations, and possibly a complainant as well. This non-public meeting will be held privately and informally, with both sides having time to speak. Many questions and clarifications will take place today. Possible recommendations that will be made to the full board range from a total dismissal of the complaint against the physician to license revocation.

The reason he is here this day is because of many incidents resulting in medical misadventures, including patient death. But it could just as easily have been that he had a substance abuse problem, or began dating a patient, or had numerous malpractice suits stacking up, or committed Medicare fraud, or didn’t use a chaperone while performing a pelvic exam, or prescribing Xanax and Percodan inappropriately, or was sanctioned by the hospital medical staff back home.

His meeting was scheduled several weeks in advance, but occasionally a complaint against a physician is serious enough to warrant an emergency, temporary suspension, with just a few days’ notice. In cases such as these, the responding physician faces a panel of 3 board members, board attorneys and others previously mentioned, and the outcome is known in advance: at the end of the day, he or she will temporarily be barred from the practice of medicine in Texas.

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Member, Texas State Board of Medical Examiners.
What can result from an unfavorable decision by the board is predictable: a ruined reputation, leading to difficulties with managed care contracts, malpractice coverage, patient censure, marriage, family, relationships with colleagues, income, self-esteem, and personal health.

State boards that regulate the practice of medicine frown on:

- true medical malpractice
- experimental medicine
- repeat offenders (malpractice)
- delegation of medical tasks to nonmedical people
- physicians who do not keep up with continuing medical education
- older physicians who have not kept up with current medical developments

To get a feel for the types and numbers of complaints filed by the Texas Board, I include statistics from September 1999 to April 2000. These numbers typify what is seen at the Board.

### Top 10 Complaints at TSBME (out of 865 complaints)

#### September 1999 to April 2000

<table>
<thead>
<tr>
<th>Number</th>
<th>% of total</th>
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<tbody>
<tr>
<td>1. Practice inconsistent with public health and welfare</td>
<td>457</td>
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<tr>
<td>2. Unprofessional conduct</td>
<td>97</td>
</tr>
<tr>
<td>3. Failure to release medical records</td>
<td>59</td>
</tr>
<tr>
<td>4. Non-therapeutic prescribing</td>
<td>36</td>
</tr>
<tr>
<td>5. Impairment due to illness or chemical abuse</td>
<td>33</td>
</tr>
<tr>
<td>6. Recurring health care liability claims</td>
<td>31</td>
</tr>
<tr>
<td>7. Persistent or flagrant overcharging or overtreating</td>
<td>30</td>
</tr>
<tr>
<td>8. Disciplinary action by peers</td>
<td>24</td>
</tr>
<tr>
<td>9. Violation of Bard Rules</td>
<td>24</td>
</tr>
<tr>
<td>10. Conviction of felony or crime involving moral turpitude</td>
<td>15</td>
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</tbody>
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### TSBME statistics for fiscal year 2000

<table>
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<tr>
<th>Number</th>
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<tr>
<td>1-800 complaint calls</td>
</tr>
<tr>
<td>Complaint forms sent</td>
</tr>
<tr>
<td>Current investigations</td>
</tr>
<tr>
<td>Investigations opened</td>
</tr>
<tr>
<td>Investigations completed</td>
</tr>
<tr>
<td>Total disciplinary hearings</td>
</tr>
<tr>
<td>Total non-disciplinary hearings</td>
</tr>
<tr>
<td>Current probationers</td>
</tr>
<tr>
<td>Temporary suspensions</td>
</tr>
<tr>
<td>Revocations/surrenders</td>
</tr>
<tr>
<td>Suspensions</td>
</tr>
<tr>
<td>Restrictions</td>
</tr>
<tr>
<td>Reprimands</td>
</tr>
<tr>
<td>Rehabilitation orders</td>
</tr>
<tr>
<td>Administrative penalties</td>
</tr>
<tr>
<td>Total penalty value</td>
</tr>
</tbody>
</table>

Of the 49,706 physicians licensed in Texas (as of September 2000), 34,232 reside in the state. Added to this are the same responsibilities for physician assistants and acupuncturists.

As you can see, the Texas Board staff remains very busy.
Unethical behavior is not necessarily medical malpractice, but malpractice acts can involve a breach of ethics, which can get you in trouble just as easily. When we think of unethical behavior by physicians, we think of things such as crossing professional boundaries, substance abuse/dependency, breach of confidentiality, and advertising that is false or misleading.

WHY THE BOARD REQUIRES MEDICAL ETHICS CME

As of January 1999, the Texas State Board of Medical Examiners began requiring 1 hour of credit in “Medical Ethics or Professional Responsibility,” as part of the 24 hours needed for annual renewal of licensure. This decision stemmed from what the board identified as an upward trend in unethical behavior. Though the board acknowledges that 1 hour of ethics credit per year is probably insufficient to change someone’s character, it hopes nonetheless that exposure to courses like these simply serve as a valuable reminder.

In his book, Becoming a Good Doctor, James Drane writes:

“The professional is limited by who he or she is; the patient is similarly limited. Yet there are many possibilities within these limits for possible moral actions: good, bad, indifferent, and excellent. Both the professional self and the other can be changed by what is decided upon. Excellence in action can change both parties. How one person uses his powers, whether speech or capacity for friendship or courage or diagnostic and therapeutic capabilities, can make both the person of the actor and person acted upon different and better persons. How a professional person will act in a relationship depends upon many factors, but images of who he or she wants to be, models of how to act, will have an influence on what actually occurs. Ethics has to do with images, models, and ideals that influence character and virtue. These concepts and categories explain better than rules and rights the kind of morality one sees illustrated in countless unrecorded stories about doctor and patient interactions. The discipline called ethics attempts to make intelligible experiences of human persons in relationships. To do so, some framework and categories have to be employed.”

In a report written by a group of medical ethics educators and published in the New England Journal of Medicine, the necessary components of an ethics curriculum were addressed:

“We believe that the basic medical ethics curriculum should be centered on the kinds of moral problems that physicians encounter most frequently in practice, rather than on sensational cases of the type that occur only rarely. The curriculum should address several different kinds of learning: the clarification of central concepts, the understanding of important decision-making procedures, the ability to apply concepts and decision-making procedures to actual cases, and the acquisition of certain interactional skills.”

FEELING THE PRESSURE AND CROSSING THE LINE

In an article recently published in the Journal of Medical Licensure and Discipline, John-Henry Pfifferling states that misconduct can be tied to burnout, substance abuse, mental illness, and greed. He states that:

“Society at large is the major factor in promoting greed as greater financial success accrues to those who practice longer, work more, and submit greater procedural bills.”

“It could be said that the number of distress factors implicated by our physician clients has increased dramatically in the last 20 years … Some of the major factors include: a decrease in
feelings of autonomy, lack of inter-generation collegial concern within training environments and practices, and vastly decreased peer support. Physicians express the greatest violation in regard to feeling that patient care is a numbers game.”

“Physicians are people first and medicine is their special interest. They, too, need emotional support, nurturance, empathy, and regular revitalization. When they don’t know how to reach out for natural energy renewal, chemical coping becomes an easy way out. They have grown up in a culture that sanctifies the instant cure. They have received more advertising on the benefits of medications than any proportionate group, except for pharmacists. Finally, their training has been woefully deficient in non-chemical coping skills.”

When attempting to identify physicians at risk, one can gain insight by referring to an article by Stul Gawande, titled, “When Good Doctors Go Bad,” which looked at patterns among 200 physicians reported for disruptive behavior. In the article, Gawande says that there are at least 4 types of behavioral sentinel events:

1. persistent, poor anger control or abusive behavior
2. bizarre or erratic behavior
3. transgression of proper professional boundaries
4. incurring a disproportionate number of lawsuits or complaints

In The Successful Physician, Marshall Zaslove reminds us that:

“Every physician has had to pass through the fires of discouragement, self-doubt, and sheer desperation to make it all the way. Each of us traded in our youth for the privilege of working hard for the rest of our active lives trying to ease the suffering of our fellow humans. We gave up a lifetime of undisturbed nights, restful weekends, and normal family routines. But just the weight of numbers dictates that there do exist a few physicians somewhere among our 750,000 colleagues who are incorrigible. To protect patients, we once in a great while have to bite the bullet and refer someone to peer review or to the department chair if he is not receptive to our repeated help and suggestions.”

**PHYSICIAN, HEALTH THYSELF**

Some of you who attended the 1999 Texas ACOFP Annual Convention in Arlington, Texas, might remember the lecture by John-Henry Pfifferling, titled “The 13 Things I Wish They Had Taught Me in Training,” in which several fundamental suggestions for physicians were put forth. They are:

1. setting life priorities
2. the importance of being my own best friend
3. the importance of comfortable alone time
4. the importance of vacations
5. dealing with sensuality and sexuality
6. the consequences of overwork
7. dealing with grief, failure, and disappointment
8. how to share our feelings appropriately
9. how to say “I don’t know”
10. how to let go of “should” and my need to rescue
11. how to say “no” and still feel good
12. how to leave your work at the office
13. the dangers of self-medication
Physicians are people first and medicine is their special interest. They, too, need emotional support, nurturance, empathy, and regular revitalization.

Finally, I felt I needed to refer to Sir William Osler. Though volumes of work have been published regarding this remarkable human being, I find particularly useful the book by Charles Bryan, in which Osler's words of advice are organized by chapter, which is ideal for my right-brained disposition. A very small, and mostly paraphrased excerpt of this outline, but one befitting the purpose of this article follows:

We are reminded to “use the mature defenses against the stresses of life.”

1. sublimation
2. altruism
3. suppression
4. anticipation
5. humor

On self-discipline, Osler advises physicians to:

- combine principles and practice
- be intellectually honest: the 4 components of which are humility, skepticism, acknowledgment of the limits of truth, and the ability to tolerate the anxiety of uncertainty
- seek balance between the various aspects of your life: profession, recreation, social, spiritual, habits, health, family, and finances — all of these parts being congruent with a central purpose

CLOSING COMMENTS

As a member of the Texas State Board of Medical Examiners, I’ve come to believe that the reason many physicians get in trouble with the law or the Board is not because they possess too little current medical knowledge, but because they lose touch with their patients, their humanity, their calling, their families, and themselves. They deal inappropriately with the stress of practicing medicine, and often consider themselves invincible and beyond reproach. They cross the line of ethical boundaries and fail to appropriately manage the mantle of power and authority bestowed upon them. They get caught up in materialism, pride power trips, and unhealthy forms of ambition. In short, their principles and priorities slowly erode for lack of constant reaffirmation.

In closing, I share with you a clever, though poignant line from a song called “Conversation With the Devil,” by Ray Wylie Hubbard. The lyrics describe a man who finds himself desperately unable to convince the devil to send him back from the fires of hell where he just arrived but didn’t belong. After realizing it was just a dream, he runs to his son’s bedroom, kisses his sleeping child on the forehead and vows to change his life.

“So some people get spiritual ’cause they see the light, some ’cause they feel the heat.”