PSYCHIATRIC ETHICS: A PERSPECTIVE ON THE AMERICAN EXPERIENCE

Lymberis M.

Clinical Professor of Psychiatry, UCLA

It is a great honor and privilege for me to have this opportunity to talk about medical ethics. While many cultures throughout the ages have developed ethics codes, for the Western World, the Oath has endured to the present as the articulation of ideals that have inspired physicians for over 2,000 years. Western medicine began in the 5th Century BC in Kos.
In this presentation, I will focus on the AMA and deal with the APA as part of the evolution of medical ethics. I will end with a discussion of sexual misconduct in Medicine and present some data from the APA and the California Medical Board.

(I) Ethics

Medicine is a societally sanctioned and regulated profession. There is an interrelationship between the profession and the social context in which it operates with each influencing and being influenced by the other. This interrelationship is particularly intense and dramatic in psychiatry where cultural values and events greatly impact on behavior labeling (sick/bad), on who gets what treatment, on who gets what punishment and on what the limits of tolerance for behavior are. For psychiatry, the concern is with the identification and clarification of the ethical issues embedded in societal values and events because of their direct relevance for psychiatric advocacy and especially clinical practice. Over the years, the APA Board of Trustees repeatedly had to identify, often in heated debate, the psychiatric aspects of highly political and social issues. In recent years, homosexuality, abortion, physician-assisted suicide/euthanasia, the abuse/misuse of psychiatry by society and the inequalities in the current economies of health care have occupied the profession.

Traditionally, ethics has been viewed as a rather esoteric, academic subject that, in the West, is identified with Aristotle and considered the province of Philosophy. Ethics is concerned with normative principles and virtues. ″At its core, ethics is concerned with searching for and rationally defending our most basic moral principles and virtues.″ Over the centuries, moral philosophy, in defending a small set of highly abstract normative prescriptions and ideals, analyzes both the language and the logic of ethical justification. Academic ethics is indeed very different from medical thinking and practice.

In the US, the teaching of medical ethics, prior to the 1990s, was largely a one-hour academic lecture course in medical school. Ethics was also part of every physician´s graduation ceremony when the Hippocratic Oath featured prominently. The massive traumas and atrocities of WWII led to an international awakening regarding destructive human behavior on a massive scale. The concern with the reality of the human ability for destruction, evil, abuse and torture led to the Declaration of Human Rights by the international community and to the Declaration of Geneva by the World Medical Association. In our highly complex, diverse, rapidly changing, technological world, ethics provides us with common ground. In our time, ethics has become the foundation of all professions

For us in medicine, the most useful definition of ethics is: ″Thinking about reasons in terms of values″. The enduring aspect of the Hippocratic Oath is its emphasis on values. Presently, in the US, medical decision-making is a process that invariably involves values. Special courses in ethics are part of the licensing requirements in all non-medical mental health professions. In medicine, there is now special emphasis on the doctor-patient relationship and ethics in all medical school curricula. The APA has just revised its Ethics Procedures for Handling Complaints to include Ethics Education as a diversion option from its Due Process Ethics Enforcement Procedures.

(II) The Hippocratic Tradition

The Oath, in the Western World, for both physicians the public, stands for the principle that physicians are dedicated to the healing of their patients. The Oath specifically defines who the physician is in human moral terms, not in terms of knowledge content alone. The physician is dedicated to the life of the individual patient, irrespective of the patient´s social status (free or slave), old or child, intellectually gifted or retarded. This was an inspirational and radical change in the mindset of ancient cultures, when discrimination and slavery were accepted as part of the social order. For the first time in history, healing was de-linked from killing. In primitive cultures, to this day, the shaman has the power to both kill and heal. What makes it possible for patients to trust their doctors is the conviction that their physician will put their needs above all else, especially personal self-interest and focus on the healing of the patient. This is the legal FIDUCIARY PRINCIPLE, which applies to many professional relationships as well as to medicine.

The Oath, in a brief statement, addresses issues that are of enduring concern in medicine up to the present. Central among the responsibilities of the physician are the dedication to preserving life and healing the sick. Additionally noted are confidentiality, abortion, euthanasia and sexual misconduct. The Oath and the Hippocratic writings represent the beginning of modern medicine because, while the Hippocratic physicians

were still steeped in religion, nonetheless they ushered in medicine as rational, empirical knowledge based on observation. This was a major step forward and, to the present, remains as the foundation of modern scientific medicine. In addition, the Hippocratic respect for the powers of the body to heal itself and the emphasis on environmental factors in healing, especially the healing powers of hope and of a caring family (now called ″social supports″), clearly resonate with our growing understanding of the importance of the biopsychosocial model in the management of illness, the promotion of health and the role of environmental factors in our biology.

In addition, the Oath´s focus on the training of physicians and the emphasis on adherence to higher individual moral standards of training and ethics, certification and recertification and advocacy on individual and population health issues. The Oath´s admonition to physicians to ″remain free of intentional injustice, of all mischief″ can be translated into our current concerns with physician impairment, with equitable access to quality care for all patients, with public health and with the impact of economics on care.

Of course, the Oath and the Hippocratic writings are dated. Over the centuries, there have been changes, but the essence of the Oath was retained until the 20th Century. In the 10th Century, the Oath was Christianized and all references to the pagan gods were deleted. Other codes were developed as philosophical thinking evolved in Europe through the Middle Ages and into the Enlightenment. By 1803, Thomas Percival, an English physician/philosopher published his ″Code of Medical Ethics″. His code, which can be viewed as his update of the Hippocratic Oath, formed the basis for the first AMA Code of Ethics in 1947. In the 20th Century, the Oath was criticized and some of its values were changed. I will now turn to a discussion of AMA ethics and note the changes in our ethics associated with the societal changes in 20th Century America.

(III)Medical Ethics in the USA

It is not well known that the APA was the first medical organization to be established in the U.S. The APA was founded in 1844. The AMA was founded in 1847. The AMA´s first order of business was to set minimal standards for medical education and to adopt the AMA Code of Ethics. The Code became the Principles of Medical Ethics during the 1903 revision. As the voice of medicine, the AMA´s Code of Ethics guides the conduct of all physicians and is viewed as the standard by the country´s courts and governmental agencies.

Between 1847 and 1975, the AMA´s Code had only three revisions (1903, 1912, 1957). The first two were not substantial. The 1957 revision separated the Principles from the Annotations and Opinions. The revision distinguished medical ethics into two categories: the Principles, which refer to moral principles or practices from ″matters of social policy involving issues of morality in the practice of medicine″ which are noted in the Opinions and Annotations to the Principles. Both, taken together, are the official code of the AMA. This structure has been retained to the present. The original 1847 Code, as well as its 1903, 1912, 1957 revisions included the prohibition against advertising. During these early years, medicine in the US was struggling to establish itself as a profession and differentiate itself from the various trades. The AMA defined the prohibition of physicians advertising as an ethical issue. However, the debate on whether medicine should be viewed as a trade or as a profession has persisted as economics has come to be a driving force in American society.

In the late 1970s, the AMA ethical prohibition of advertising by physicians came to a head with the suit by the Federal Trade Commission against the AMA, the Connecticut State Medical Society and the New Haven County Medical Association for restraint of trade because their code of ethics prohibited advertising. There ensued a seven-year legal battle. The U.S. Supreme Court, in 1982 with a 4-4 split decision, left in place the lower court ruling that both barred the AMA from prohibiting advertising and required that the AMA obtain an FTC review and authorization prior to disseminating any new ethical guidelines. For the FTC the issue was the cost of health care. The FTC viewed medicine as a monopoly that used ethics to increase profits for its members. If doctors can advertise, patients can comparison shop and thus the cost of services can come down, as it happens with all other commodities in the marketplace. The issue of advertising in medicine has been resolved by considering advertising that merely disseminates information as ethical whereas advertising that manipulates the public´s unconscious wishes and fantasies as unethical because it is deceptive. The ethical issues involved are honesty and truthfulness, but the tension of trade vs. profession is persisting now when the economics is the driving force worldwide. In our world of rapid economic and technological changes, medicine is changing in ways that are causing major concern. There is a perceived loss of human contact and trust in the doctor/patient relationship. As medical care continues to experience cost increases, becomes procedure-driven and highly technical, and adopts the corporate model, the dangers of bureaucratization and dehumanization loom large, ″Is medicine just another commodity?″ expresses a real concern. We just cannot afford to lose medicine as a dedicated, personal human service based on trust and ethics. The Wall Street Journal, on 4/9/04, had a lead article on page one about the Toyota model of running a successful hospital. We are challenged to change while maintaining our integrity and our humanistic values.

The history of medical ethics in the US is closely tied to the relevant US history. Modern medicine in the US is a post WWII phenomenon. America was transformed after WWII. These changes are reflected in the 1980 AMA revision of the Principles of Medical Ethics. The 1980 AMA ethics revision maintained the 1958 format but shortened the sections from 10 to 7. Most significantly, it departed from the Hippocratic tradition. The changes made reflected the profound societal changes of our post-modernism, deconstructionist world where ″all is relative and nothing is materially significant″ and where economics and competition in the marketplace are the major societal forces. The age-old values of paternalism

changed. Belief in the possibility of perfection, absolute knowledge, certainty and authority were challenged. For the first time in over 2000 years, some of the values of the Hippocratic tradition changed as follows:

1. Gone is ″The Doctor Knows Best″. There is no absolute authority and no certainty or absolute knowledge. Evidence based medicine involves treatment decisions based on risk-benefit analysis. Today, medical advances are instantly posted on the internet and are accessible globally. Knowledge is relative and dated. Science is work in progress.
2. The central value of the Hippocratic tradition: The doctor-patient relationship, as the cornerstone of all medical care is retained. However, the patient is now a full partner in the decision-making process during medical care. All treatments require the informed consent of the involved patient. In fact, informed consent is also required in all research protocols in medicine.
3. Confidentiality is no longer absolute but ″within the constraints of the law″ It is interesting to reflect that the Hippocratic Oath´s exclusivity and emphasis on the sanctity of the doctor-patient relationship and confidentiality, emerged at a time when there was no Declaration of Human Rights, when slavery and racism were part of the societal order and when women had no organizational voice, power or rights. For over 2,000 years, the Oath provided a sanctuary for the sick. In our time, when everything can be used and abused, confidentiality is a value that society has a stake in, not just the individual patient. The conflicts over confidentiality in the US are currently reflected in the legal, governmental and regulating arenas as the electronic medical record is being adopted as the standard in medical care throughout the US. Psychiatrists now have to deal with the numerous ethical conflicts. For example, the duty to warn third parties of imminent danger of harm from their patients (1976-Tarasoff) conflicts with the duty to protect the confidentiality of those patients. But the legal mandate to warn third parties of imminent danger is an accepted exemption of the duty to preserve confidentiality.
4. The ethical duty of physicians ″to participate in activities contributing to an informed community″ also reflects a departure from the Hippocratic view of the physician´s exclusive dedication to the individual patient. We are now confronted with massive public health problems affecting large segments of the population as well as populations with specific health issues, in addition to our traditional concerns with individual patients.
5. There is no longer any reference to advertising which had featured prominently in all versions of the AMA´s Ethics since its inception in 1847. By this time, advertising is part of the American culture because of its value, both as information and as an economic tool. Medicine continues to struggle to bridge the values of economic profit with its ethical base of service to both individuals and populations, while the number of people in the US not covered by health insurance is now over 40 million and rising..
6. There is no reference to gender discrimination, sexual harassment of medical student, house staff, physicians or other health care providers, or sexual misconduct and exploitation of patients. It was first in 1986 with final revisions in 1994, when the AMA Council on Ethical and Judicial Affairs defined as unethical conduct such behavior by physicians. This is almost 15 years after the APA had first defined sexual involvement with patients as unethical in the practice of psychiatry (1973).

Next to WWII, the events of the 1960s are credited or blamed for the transformation of US into the society we recognize today. ″The turbulent 60´s″ unleashed movements in just about every aspect of the American life. Their impact on medicine and especially psychiatry has been enormous. I´ll address some key movements.

1. Civil rights movement exposed the face of racism in American society and led to the Civil Rights Act of 1964 which ended racial segregation.
2. Women´s movement exposed the realities of the social inequalities of females in a male-dominated society as well as sexual harassment in the workplace. This made possible the identification of domestic violence, child physical and sexual abuse as public health issues.
3. Patients rights movement put the final nail on the coffin of the paternalism of the Hippocratic tradition by making patient autonomy and informed consent the dominant value in health care across the US.

   The patient´s rights movement was powerfully strengthened by advances in psychiatry. The emergence of psychopharmacology made de-institutionalization a reality. Psychiatry moved into the family of medicine as psychiatric wards emerged in general hospitals and the number of patients in state mental hospitals began to decrease as community mental health came into existence. By 1997, the number of state hospital beds per 100,000 populations decreased from 339 beds in 1955 to just 40 and it is still declining.

   These were also the Golden Years of Psychoanalysis in the US. Psychoanalysis should be credited as the first step in the on-going effort to de-stigmatize mental illness. Psychoanalysis helped to popularize psychiatric treatment by making it ″a must″ for the educated, the rich and the famous. Today, outpatient psychiatric care is the standard. Today, all but a handful of freestanding private psychiatric hospitals have closed. In Los Angeles a psychiatrist is challenged to find a psychiatric bed to hospitalize a patient in need because all acute beds are filled. There are now just a few long-term psychiatric treatment centers in the US still in existence, but cost considerations restrict access to mostly the affluent patients who can afford to be treated there.

   The patient´s rights movement, as well as some psychiatrists criticized psychiatry harshly (often unjustifiably) for its complicity in being an agent of the state for social control and conformity. Some even denied the very existence of mental illness (Szass, 1961). The

social wave of autonomy, civil rights and empowerment resulted in the restriction of involuntary hospitalization under the criteria of imminent danger to self or others. The right to deny treatment put the concerns about deprivation of liberty above the need for treatment. Today in the US, the persistently chronically/severely mentally ill are homeless or in jail. The Los Angeles County jail is presently the largest "State Hospital" in the US, employing almost 200 psychiatrists. The cost of freedom for both patients and society is quite high, indeed. Presently psychiatry in coalitions with patient advocacy groups is working to develop involuntary outpatient treatment laws for the severely, persistently, chronically mentally ill. It is a complex, difficult effort.

4. The Gay and Lesbian movement led, in the 1970s, to the APA Referendum and the removal of homosexuality as a diagnosis from DSM-II. The acceptance of homosexual members in the governance of APA expressed APA´s commitment to the removal of the stigma attached to homosexuality and led to the formation of the Committee on Gay and Lesbian Issues in the Council on National Affairs.

   The APA´s stance on homosexuality dramatically underscored an on-going and ever-present tension in the profession as to where the boundary should be drawn between legitimate scientific psychiatric issues and political social issues. Heated discussions continue in the profession as "hot social" issues like abortion, euthanasia, inmates on death row with psychiatric conditions and capital punishment have legitimate psychiatric and medical dimensions. Psychiatry is being accused of being politically both too conservative and too radical and liberal.
5. The Self-Help Movement

   It has been estimated that by the 1970s there were well over 5 million self-help groups operating in the US on a plethora of issues. In the field of mental health Alcoholics Anonymous is the patient self-help group that is internationally known, National Alliance for Mentally Ill, NAMI, is composed of family members of chronically mentally ill and the National Mental Health Association, NMHI, which was originally founded by Clifford Beers in 1909 as the National Committee for Mental Hygiene, are currently considered the two most effective consumer advocacy groups in the US. The Church of Scientology is currently the most organized and well-funded anti-psychiatry group in the USA with worldwide aspirations.
6. The Emergence of Bioethics

   This opened up medical decision-making to the non-medical community. In a climate of increased social consciousness about civil rights and empowerment, the ethical dimensions of medical research and practice became a public concern. For centuries, Western societies delegated to medicine life and death decisions. Now, these are open to public scrutiny. The community has an active role and a seat at the table on a par with physicians in the bioethics committees of medical institutions across the US. The AMA´s revision of 1980 recognized the physician´s responsibility towards the community as part of the guiding ethical principles for physicians.

   Proposals for research involving human subjects now undergo detailed scrutiny. There are "watchdogs" everywhere. Cutting edge medical procedures, ranging from the 1967 first heart transplant to the recent allegations of improper research on patients in prestigious medical centers (like UCLA and Johns Hopkins) continue to provoke intense public responses. More than ever, in its history, medicine is now open to societal review at every level. The emphasis on transparency and accountability has changed the old world of secrecy and exclusivity.

   In 1997, the AMA, at its 150th anniversary, held its first Ethics Conference in Philadelphia on "Ethics and Modern Medicine". The conference was sponsored by the newly created AMA Ethics Institute. The Ethics Institute is working on developing educational programs for practicing physicians on end-of-life care. Policy issues on access to insurance care are among the top educational programs on the Institute´s agenda. In 2002, two new principles were added in the latest revision of the AMA Principles. The new principles reflect current concern over inequalities and failures in the health care system, where there are over 40 million people uninsured and the vast majority of the insured being underinsured.

   The AMA Principles are complimented by the Opinions with Annotations of the Council on Ethical and Judicial Affairs of the AMA. Together with the Opinions with Annotations, the Principles constitute the ethical standard for all of medicine in the US. Among the forces that transformed American Medicine in the 20th Century was the introduction of health insurance in the 1920´s. Today, health care in the US absorbs over 14% of the gross national product and that figure continues to increase. The combined governmental and insurance pressures on practicing physicians are now blamed for the growing dissatisfaction among physicians with the practice of medicine. Daily, physicians have to navigate a plethora of ethical and legal problems. "Thinking about reasons in terms of values" is how, in every day medical practice, ethics has become a part of the physician´s problem-solving process in these troubled times.

   The 1997 edition of the AMA "Code of Medical Ethics: Current Opinions with Annotations" includes sections on the Fundamental elements of the Patient-Physician Relationship and on Patient Responsibilities. There are excellent references to both the AMA´s opinions and to legal references on eight specific issues clarifying the official AMA positions on social policy, interprofessional relations, hospital relations, confidentiality, advertising and media relations, fees and charges, physician records, practice issues and professional rights and responsibilities.

(IV) APA and Ethics

This history of American psychiatry is closely linked to that of the US. Both were isolated in their early year. The

transformation of American psychiatry from the 1844 segregated world of asylums and state mental hospitals to the diverse, multifaceted psychiatry of today is a post WWII phenomenon.

The APA always recognized the AMA Code of Ethics, but it was in 1973, when the APA officially adopted the AMA Principles of Medical Ethics. This was some 30 years after the establishment of the first APA Ethics Committee (1944).

In its early years, the APA, like the AMA, was concerned with professional integrity and public image. Caution and conservatism characterized the actions of the young Ethics Committee. From the beginning, educational efforts were undertaken to assist members in presenting psychiatry as a ″scientifically credible″ medical specialty, discouraging as unethical practice ″anything said or pictured that could be construed as advertising or aggrandizement″ (Lazarus, 2000). During the 1950s, the APA Ethics Committee processed 35 complaints against its members and held hearings. The Ethics Committee had trouble conducting investigations, many cases were never closed, and two of the 35 complaints involved accusations of sexual misconduct. (data from APA Archives).

In 1973, the APA underwent a major organizational restructuring as its membership grew dramatically from 5,856 members in 1950s to over 30,000 members by the end of the 1970s, to a peak of over 40,000 in the 1990s and currently stands at 35,000 members. As part of this re-organization, the APA published the first edition of the AMA Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry.

The APA Annotations have undergone numerous revisions since 1973, reflecting profound changes, both in society at large and in the APA. My involvement with APA Ethics began in the late 1970s, when, as the Chair of the Southern California Psychiatric Society´s Ethics Committee, I pioneered ″Due Process″ hearings in the APA. This was a highly controversial change because it signaled the end of ″an unwritten″ medical tradition of collegial protection. Due process hearings required the presence of an attorney and involved legal fees while members of the Ethics Committee volunteered endless hours as a service to their profession. The controversy was resolved when, some ten years later, in 1986, by law (the Federal Health Care Quality Improvement Act), due process rights were provided to all physicians undergoing peer review. 1986 was also the year I ended my service as Ethics Chair and moved over to ethics education.

The investigations of the ethics complaints with due process hearings were designed to safeguard the integrity of the profession. Participating in an ethics hearing was extremely stressful, not just for the accused member, but for all Ethics Committee members. The accused were often prominent professors with stellar academic credentials. What was even worse, the bulk of the accusations turned out to involve sexual misconduct. Data from the APA Ethics committee, which received the results of all locally conducted ethics hearings for final review and action, reveals that in the 1970s, the membership-adjusted number of ethics complaints were almost double the number of 1950s complaints. The complaints increased from 6/1000 members in 1950s to 10/1000 members in 1970s. More importantly, in the 1970s, a record of 10 APA members per 1,000 were accused of sexual misconduct.

The 1970s were, for the APA, what the last five years have been for the US Catholic Church. Both institutions were shaken by the revelations of sexual misconduct by their members. As we know, from our work in long-term psychotherapy, change is very painful and takes time. The APA struggled with the problem of sexual misconduct from 1970s through the 1980s and 1990s. The peak was the years 1991 to 1993, when the past APA President, Jules Masserman was suspended for five years and the APA Deputy Medical Director, John Hamilton was expelled after complaints against them for sexual misconduct were investigated under the APA Ethics Procedures. These were very painful years for all of us in psychiatry.

The relentless coverage of sexual misconduct in the press, the countless TV airings, and a variety of TV programs and movies, eventually led to legislative action in most of the states. Sexual misconduct was legally defined as unprofessional conduct, first in psychotherapy by any mental health professional (licensed or not). Later, the offense was also criminalized in some states. In the 1990s sexual misconduct was defined as unprofessional conduct for all health care professionals throughout the US. The APA served as the ″canary in the mine″ by specifically identifying sexual misconduct as ″unethical″ in its first edition of the APA Annotations in 1973. The APA´s commitment to ethics through ethics enforcement by due process and ethics education had a major impact inside and outside the profession.

As a testament of the role of ethics in our times, I want to share a personal experience. In 1978, as the newly appointed Chair of the Southern California Psychiatric Society Ethics committee, I participated in a conference sponsored by the Medical Board of California on the issue of Sexual Misconduct in Medicine. At issue was the long established policy of the Medical Board that considered sexual relations between physicians and patients to be a matter between consenting adults and totally unrelated to the practice of medicine. As a psychiatrist and psychoanalyst, I found this ironic. Here was an instance of betrayal of trust in the unequal relationship between physician and patient which was bound to contaminate and destroy any possibility of treatment, yet the Board´s view was that it was unrelated to medical practice. I felt this was an instance of revolutionary excess. The sexual revolution coupled with the values of autonomy and individual choice had totally ignored the Hippocratic tradition and its prohibition of physician-patient sex (*″be free or slave″). Now, in 2004, it is acknowledged that every health care profession has members who transgressed the boundaries of the treatment relationship. In 2001, the American Psychoanalytic Association was shaken by the action of the Massachusetts Board of Medicine that removed the license of Ralph Engle, Chair of the American Psychoanalytic Association´s Ethics Committee and a Harvard professor,

after investigating a complaint for ethics violations during treatment involving boundaries (i.e. sexual misconduct). Today, there is a broad social consensus that identifies as unethical and illegal any bridge of trust in a fiduciary relationship. Medicine is just one of the involved professions. Others, especially the law and religious organizations, have had to also address the problem.

This ″sea change″ illustrates the dynamics of social change and is the direct result of the Human Rights Movement that has empowered large segments of society, especially women. In this dramatic change, psychiatry served by studying the problem of sexual misconduct, documenting the harm to patients, identifying the dysfunction in the offenders, providing data on the treatment and rehabilitation for both patients and offenders and developing educational programs aimed at prevention. The APA developed two videos on Sexual Misconduct. I hope to present these to you at a future meeting.

During these decades, licensing boards across the US were also restructured. The boards have become very active in investigating complaints. Meanwhile, the cost to professional organizations for enforcing their ethics principles with due process hearings has become prohibitive. The APA estimated that, during the peak decades of 1980s and 1990s, the cost of processing all of the complaints from all over the country ran between 1-2 million dollars per year. The professions have moved more and more toward education for prevention. The APA recently established ″The Education Option″. This means that, if after review of a complaint by the local ethics committee, the issues are found to be such that an educational approach would be applicable, the accused member can opt for an educational practice review rather than an investigative

MEDICAL BOARD OF CALIFORNIA - (Data 1992-2003 from Annual Reports)

Complaints and Disciplinary Actions Data for MDS

FISCAL YEAR	1992/93	1993/94	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03
Total MDS Licensed	102 891	102 076	102 622	103 130	104 046	105 528	106 909	108 068	109 289	112 273	115 354
Total Complaints Received	8 730	8 666	11 465	11 467	10 123	10 816	10 751	10 445	10 899	11 218	11 556
TRO/ SO Total	53	2	19	22	43	51	43	36	44	66	40
For SM Requested	21	6	3	5	7	8	8	8	20	13	11
For SM Granted	4	2	6	4	5	4	4	8	17	15	6
Disciplinary Action Total Cases	149	224	353	345	340	383	359	366	288	261	323
Disciplinary Action SM Cases	18	31	30	10	27	19	33	22	16	23	20
1. Revocation		15	11	10	1	3	5	4	5	7	4
2. Surrender		4	15	5	11	10	11	10	4	10	8
3. Probation with Suspension		6	2	3	4	2	1	1	1	3	2
4. Probation		2	6	10	8	1	14	5	6	0	5
Percentage of SM to Total Cases	12%	14%	9%	3%	8%	5%	9%	6%	5%	9%	6%
Yearly Budget of MDC (millions)	25 081	28 321	31.126	31.237	32.771	31.733	32.383	33.569	36 174	38.488	38.309

MEDICAL BOARD OF CALIFORNIA - (Data 1992-2003 from Annual Reports)

DISCIPLINARY ACTIONS TAKEN BY CATEGORY

FISCAL YEAR	1992/93	1993/94	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03
TOTALS	149	224	353	345	340	383	359	366	288	261	323
Inappropriate Prescribing	16	38	41	41	54	27	27	34	28	25	25
Negligence	57	70	93	95	123	166	180	184	100	85	135
Unprofessional Conduct	7	25	29	69	53	56	26	20	40	40	46
Substance Abuse (drugs/alcohol)	10	32	23	37	27	19	27	32	38	24	27
Mental Illness	2	3	7	16	16	22	15	21	18	21	25
Sexual Misconduct	18	31	30	35	27	19	33	22	15	23	20
Fraud	3	39	16	29	8	17	15	24	33	19	14
Other	16	38	41	41	54	27	27	34	25	24	31

due process hearing with its associated risks of censorship with reprimand, suspension or expulsion, if found guilty of an ethics violation. It is too early to comment on the effectiveness of this change. The change has been welcomed by the membership, which came to view the ethics hearings as too adversarial.

Currently in the US, it is the medical boards that primarily deal with the investigation of serious ethical violations which result in malpractice and harm to patients. My involvement with the Medical Board of California has given me an opportunity to work closely with the Board´s investigators who have the power to conduct extensive investigations with legal authority.

(V) The Medical Board of California

The reality of the impact of society on medicine is graphically illustrated by the growth of legislation and governmental regulation affecting all aspects of medicine in the US. Today, the AMA, as well as all of the medical subspecialty organizations, spend the bulk of their time and money attempting to track, evaluate, respond and work to initiate, promote, amend or defeat proposed legislation. The various state licensing medical boards are working to enforce the implementation of new and existing legislation and regulation as well as to monitor compliance, in addition to their traditional function of protecting public health through the licensing and disciplining of physicians. The increased activism of the medical boards involves cost increases. In California in 2002–2003, the Medical Board´s budget was over $38.5 million. The Board has a Licensing Division and a website where the public can access information about all licensed physicians, including whether they had been subject to any disciplinary action by the Board, as well as details on all medical malpractice settlements that each individual physician had. Physicians have mandatory continuing education requirements for re-licensure. In recent years, the Board has initiated mandatory educational programs for all disciplined physicians for ethics violations. The program includes a psychiatric evaluation of the practitioner and courses in professionalism and medical ethics.

`zngs. This is $26.5 million in a $38.6 million budget.

Data from the Board for the period 1992–93 through 2002–03 demonstrate that, while the number of physicians has increased by 12%, the number of complaints has increased by 42%. During the same period, the total number of completely processed ethics cases in the APA has dropped from a high of 71 cases in 1996–97 to just 14 in 2001 (APA data), reflecting a dramatic decrease in the number of ethics complaints being processed by the APA. The most egregious cases are now referred to the State Medical Boards for investigation and hearing because lost of license automatically leads to loss of APA membership. The APA ethics procedures include the requirement that there be an ethics review when an APA member is disciplined by a Medical Board.

While the California Board yearly receives over 100,000 complaints, the number of completed investigations is relatively small, numbering in the hundreds. Looking at the types of problems that result in disciplinary action, over one third involve ″negligence″, which means extreme deviation from the standard of care. Two thirds are essentially ethical problems with or without psychiatric dysfunction such as mental illness and substance abuse. Sexual misconduct represents a very significant problem because the Board lists, as ″unprofessional conduct″, allegations of romantic but not actual sexual involvement with patients or cases that, upon investigation, do not meet full criteria for clear and convincing evidence for sexual misconduct but do meet criteria for boundary violations, rather than for sexual misconduct.

Sexual misconduct exposes the human vulnerability of physicians. All of us, as human beings, are potential or current patients. As physicians, we are exclusively legally and ethically responsible for the establishment and maintenance of the doctor/patient relationship with each and every patient. Numerous studies since the 1970s have documented that the incidence of sexual misconduct is around 5–10%, although under reporting is very common. Today sexual misconduct is recognized to be an occupational risk in the health care field with psychiatry along with OB-Gyn, family practice, plastic surgery and internal medicine carrying a higher risk. There is no specific profile for offenders and, while men constitute the majority of offenders, women caregivers are often involved in both heterosexual and homosexual violations.

The consequences are grave for physicians and patients. The Hippocratic Oath´s prohibition is clearly an example of wisdom that we do service to ourselves to follow.

Corresponding author:
Maria T Lymberis, MD
Clinical Professor of Psychiatry, UCLA
1500 Montana Av, #204
Santa Monica, Ca 90403
Ph: 310–451–3152
Fax: 310–454–1039
website: www.lymberis.com