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Encouraging Physician-Attorney Collaboration through More Explicit Professional Standards

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In this age of multi-layered global problem solving, the skill of working with other disciplines is a necessary tool for any professional. Societal ills can no longer be solved by narrow approaches learned in graduate training but call for interdisciplinary collaboration. Effective collaboration of this nature requires the professions to understand the differences in professional cultures and to bridge the communication gap caused by these differences.[2]

Legal and medical training offer useful, but often conflicting, approaches to problem solving, thus, potentially impeding our abilities to understand and communicate with others regarding a shared issue or problem.[3] As one very recent text confirms:

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[1]This writing, by the three of us, serves as an example of the potential for collaborative efforts among our disciplines. We offer our thanks to Dean Steven Smith and Professor Janet Weinstein for commenting on earlier versions of this draft.

[2] For a discussion of the necessity of collaboration to effective problem solving, *see generally* Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice,* 74 WASH. L. REV. 319 (1999). Collaborative efforts are important, due to "(1) acceleration of professional specialization, (2) fragmentation of services, (3) a growing demand to treat the client as a whole person, and (4) the emergence of complex social and ethical problems beyond the scope of one profession or discipline to solve." INGER P. DAVIS ET AL., INTERDISCIPLINARY COLLABORATION AND EDUCATION IN CHILD WELFARE PRACTICE 2 (1997) (cited in Weinstein, *supra* note 2, at 326-27); *see also* Kim Diana Connolly, *Elucidating the Elephant: Interdisciplinary Law School Classes*, 11 WASH. J.L. & POL'Y 11, 13-14 (2003) (describing the need for lawyers to collaborate with other professions to succeed in legal problem solving).

[3] For further detail as to how fundamental differences in our professional education influence our contrasting viewpoints, *see* Randye Retkin, Julie Brandfield, Ellen Lawton, Barry Zuckerman, and Deanna DeFrancesco,

> Right now, attorneys and physicians are not exactly partners in resolving problems in the health care delivery system. The level of mistrust between the legal and medical professions is deep and has adverse implications for patient care that must be addressed. Yet law and medicine are in fact closely connected and interact visibly on many levels. How the two professions interact - namely their ability to cooperate and accommodate professional differences- has important implications for health care delivery.[4]

If law and medicine are in fact "closely connected," as the authors of the text assert, why do our collaborative efforts not come easily? In addition to our disparate training, one can point to the nature of our interactions following training. For example, medical malpractice litigation often pits attorneys against accused doctors, or, at a minimum, creates the perception that lawyers are pricing doctors out of business. Though studies have shown these views to be flawed,[5] society's perception, and in particular, the medical community's perception of lawyers as sharks feeding on medical error remains. There are certainly other points of potential controversy between the professions, including issues surrounding patient advocacy, bioethics, and privacy. These points of potential controversy often, and unfortunately, involve lawyers telling

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Lawyers and Doctors Working Together – A Formidable Team, 20 HEALTH LAW. 33, 33 (2007).

[4] LAWRENCE O. GOSTIN & PETER D. JACOBSON, LAW AND THE HEALTH SYSTEM 5 (2006).

[5] *See, e.g.*, Tom Baker, *Reconsidering the Harvard Medical Practice Study Conclusions About the Validity of Medical Malpractice Claims*, 33 J.L. MED. & ETHICS 501, 511 (2005) (asserting that the litigation system weeds out weaker cases of negligence in malpractice claims). For a discussion of factors which have influenced the amount of malpractice premiums, *see* Grant Wood Geckler, *The Clinton-Obama Approach to Medical Malpractice Reform: Reviving the Most Meaningful Features of Alternative Dispute Resolution*, 8 PEPP. L. REV. 171, 173-75 (2007).

doctors what they should have done or must do, in order not to be sued by other lawyers – not a situation conducive to collaboration.

Though we lament any rifts between our professions, our greater need, in this society, is to problem solve complex issues effectively. To do so, it is imperative for our professions not just to cooperate, but also to collaborate. Our collaborations will not only help solve complex societal issues, but may also help heal our professional misunderstandings, and even allow for greater professional satisfaction.[6]

Training and experience in interprofessional collaboration is certainly important to effective interdisciplinary problem solving. We argue here that, as an initial step in support of this training, the professions of law and medicine must articulate stronger support for interprofessional collaboration in their own professional standards.

Though each profession has created standards that may hint at the further collaboration of the professions, we believe the standards do not go far enough. For example, both medical and legal standards stress the teaching of communication skills. However, these communication skills are emphasized only with members of the doctor's or lawyer's own profession, or the doctor's patient and the attorney's client. If we are to close the professional gap between doctors and lawyers, and thus give teeth to the idea of interdisciplinary problem solving, it is incumbent upon the leaders of each profession to create standards specifically encouraging, if not mandating, interprofessional communication and collaboration in their professional training.

To provide context for our position, the first section of this essay offers a theoretical perspective on fundamental components to interdisciplinary collaboration. Section II describes the current support for collaborative skills in each profession's operational standards, and suggests alterations and additions to lend further support to interdisciplinary problem solving.

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[6] Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459, 468-69 (1993).

I. FUNDAMENTALS OF INTERDISCIPLINARY COLLABORATION

Relying on prior work by sociologist Inger Davis, law professor Janet Weinstein provides a useful theoretical framework for understanding causes of and remedies for interprofessional divides in her article, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice.*[7]

According to Weinstein, barriers to interdisciplinary work include: professional cultural differences; lack of skills training; the competitive and narrow nature of legal education and practice; and personality issues in lawyers and law students which can inhibit collaborative skills.[8] Skills necessary to facilitate interdisciplinary collaboration are: "(1) communication skills;[9] (2) knowledge of non-legal resources;[10] (3) awareness of self and others;[11] (4) an understanding of and appreciation of group process; and (5) leadership skills."[12] As we argue below, some of these skills are incorporated in legal and medical standards – a fact which we applaud. However, the context for these skills, as described in the standards, focuses only on interactions within each profession, and not outside of it.

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[7] Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice,* 74 WASH. L. REV. 319 (1999).

[8] *Id.* at 320.

[9] Communication skills have two facets. One is the "ability to speak and understand a shared language." The second is "the ability to engage in dialogue with another, so that the participants actually exchange ideas," otherwise known as "active empathic listening." *Id.* at 335-36.

[10] Weinstein names five components to fulfilling her second criteria, "Knowledge of Non-Legal Resources:" knowledge of "(1) the training involved, both content and process; (2) licensing requirements; (3) the kinds of work professionals in this discipline do; (4) the underlying values of the profession; and (5) the limitations of the discipline's expertise." *Id.* at 337.

[11] Awareness of self and others comprises knowledge of "one's personal and professional values," as well as prejudices and behaviors – particularly those that might affect teamwork. *Id.* at 338.

[12] Under the final category of Leadership skills, Weinstein describes a number of skills necessary for leaders to "convey a sense of authority and to maintain a sensitivity to group needs." *Id.* at 340.

The consensus is that interprofessional collaboration skills should be taught during graduate study, once learners are well-grounded in their studies, but before they become too entrenched in their ways of approaching problems.[13] Speaking of the "fracas" between doctors and lawyers over forty years ago, law professor Leonard S. Powers optimistically stated:

> The point is that those being prepared for the professions and who are not yet in the fracas may be assisted in avoiding it altogether. It should be possible to do this, because our discovery is that the law-medicine conflict is based largely on misinformation and ignorance. It follows that law schools and medical schools find themselves in a most strategic position relative to these interprofessional tensions.[14]

On the other hand, Weinstein cautions against teaching students to collaborate with other professionals too soon, stating that even the third year of law schools' current curricula may be too early for law students. According to Weinstein, if these skills are to be taught and practiced sooner, law schools must make an effort to expose students to other professionals earlier in law school.[15]

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[13] *See, e.g.*, Leonard S. Powers, *Interprofessional Education and Medicolegal Conflict as Seen from the Other Side*, 40 AM. J. OF MED. EDUC. 233 (1965) (cited in WILLIAM J. CURRAN & DONALD E. SHAPIRO, LAW, MEDICINE AND FORENSIC SCIENCE 4 (Little, Brown and Company 1970). "The best time to offer interprofessional education is in the senior year of professional school. It is not easy to relate another discipline to your own until you know quite a lot about your own." For further support for introducing interdisciplinary education at postgraduate levels, *see* Pippa Hall & Lynda Weaver, *Interdisciplinary Education and Teamwork: A Long and Winding Road*, 35 MED. EDUC. 867, 869 (2001).

[14] Powers, *supra* note 13.

[15] Weinstein, *supra* note 2, at 357-58.

Certainly all would agree that, if we acknowledge the significance of teaching our students interprofessional collaboration, there must be institutional support.[16] We suggest that our professional standards of education and practice are the first place to commence this support.

II. THE STANDARDS: LAW AND MEDICINE

In 1970, efforts began to codify the interrelationships of doctors and lawyers. Authors of a legal text published a National Interprofessional Code for Physicians and Attorneys, "intended as guides for physicians and attorneys in their inter-related practice in the areas covered by its provisions."[17] Unfortunately, the code focuses primarily on professional cooperation during litigation and "legal controversies." The code begins with the suggestion that physicians "should promptly furnish attorney with a complete medical report," and ends with the guideline, "The attorney and the physician should treat one another with dignity and respect in the courtroom."[18] Nowhere in the Code is there a suggestion for working together on larger social issues outside of the courtroom. The benefits from the Code accrue only to lawyers and doctors. The Code stands as an effort to streamline the litigation process, while maintaining the dignity of the doctors and lawyers within it.

In contrast, our focus of collaboration involves joint work and shared decision-making for the social good. The interprofessional process takes advantage of the knowledge and experience of each collaborator in order to arrive at new ways of solving problems.[19]

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[16] Daniel Stokols, *Towards a Science of Transdisciplinary Action Research*, 38 AM. J. CMTY PSYCHOL. 63, 69 (2006) (stating certain contextual factors which strongly influence "collaborative readiness," including "the presence or absence of institutional supports for inter-departmental and cross-disciplinary collaboration").

[17] CURRAN & SHAPIRO, *supra* note 13, at 37.

[18] *Id.* at 39.

[19] For an in-depth study of collaborative work, *see* Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*,

More recently, in the past two decades, the professions of law and medicine have undergone an intensive period of self-reflection, and produced a series of standards regarding competency and training in each of their professions, which have interesting parallels. Standards for both professions emphasize the importance of collaborative elements, such as communication skills and group work, and the importance of professionalism. Yet the focus of these standards is still within each profession, not outside of it. There is no explicit standard regarding interprofessional collaboration or interdisciplinary problem solving. An unfortunate potential inference is that the professions are still mired within their own professional worlds. Though they look outside of their professional enclaves to help others, there is little evidence that they place importance on learning to collaborate as equals with those who are not of their own professional group.

A. Standards for Medicine

In 1999, the Accreditation Council for Graduate Medical Education (ACGME) published a list of "competencies" or "Minimum Program Requirements" for residency programs. The competencies, recently revised in 2007,[20] illustrate the medical profession's emphasis on clinical learning, and stress the assessment of both skills and professionalism.[21] The competencies include "Interpersonal and Communication Skills," which include:

> (1) communicate effectively with patients, families and the public, as appropriate, across a broad range of socioeconomic and cultural backgrounds;

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17 VT. L. REV. 459 (1993). For Professor Bryant's definition of collaboration, *see id.* at 460-61.

[20] For a listing and further background on the core competencies, *see* http://www.umm.edu/gme/core_comp.htm.

[21] WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 175-76 (Jossey-Bass 2007).

> (2) communicate effectively with physicians, other health professionals, and health related agencies [...].[22]

Although the competencies describe important collaborative skills, the skill of effective communication should include communication with other non-health professionals.

The competencies also require a "Systems-Based Practice," as manifested by actions that "demonstrate an awareness of and responsiveness to the larger context and system of health care, as well as the ability to call effectively on other resources in the system to provide optimal health care." Certainly, awareness of context and system resources should include knowledge of and ability to communicate with other professionals outside of the healthcare system. More explicit inclusion of the ideas of using team members and resources outside of the health system would offer the needed institutional support to further inter-professional collaboration.

Authors of an article in the New England Journal of Medicine call for a "fundamental redesign of the content of medical training."[23] Specifically addressing the lack of interprofessional education in medical schools, the authors state:

> Although many students and residents are interested in learning about interprofessional teamwork, population health, and health policy and the organization of health services, these topics tend to be poorly represented in medical school and residency curricula. It can be hard to teach messy real-world issues, but practitioners need to

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[22] Accreditation Council for Graduate Medical Education, Common Program Requirements, *available at* http://www.acgme.org/acWebsite/dutyHours/dh_dutyhoursCommonPR07012007.pdf.

[23] Molly Cooke et al., *American Medical Education 100 Years after the Flexner Report*, 335 NEW ENG. J. MED. 1339, 1342 (2006), *available at* http://content.nejm.org/cgi/reprint/355/13/1339.pdf.

> understand how these issues affect their patients and how to interact with, and ultimately improve, an exceedingly complex and fragmented system to provide good patient care.[24]

More recently, the American Board of Pediatrics (ABP), which certifies general pediatricians and pediatric subspecialists, began a comprehensive assessment of pediatric residency training, entitled the Residency Review and Redesign in Pediatrics project, or R3P. The project's mission is not only to determine the competencies necessary to current and future pediatric practice, but also to delineate the training required to achieve these competencies.[25] We urge the ABP to include in its list of competencies those relating to interprofessional collaboration and to require specific training in knowledge of other disciplines, self-awareness, and communication skills.

B. Standards for Law

The American Bar Association (ABA) has published standards for accreditation of law schools.[26] Although the standards do require all law schools to offer clinical practice experiences,[27] pro bono work,[28] and "small group work through seminars, directed research, small classes or collaborative work,"[29] there is no mention of providing students with experiences of

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[24] *Id.* 1341-42.

[25] *See, e.g.,* http://www.innovationlabs.com/r3p_public/main.html, one of the many websites discussing this project (last visited Apr. 6, 2008).

[26] American Bar Association, 2007-2008 ABA Standards for Approval of Law Schools, www.abanet.org/legaled/standards/standards.html (last visited Apr. 6, 2008) [hereinafter ABA STANDARD].

[27] ABA STANDARD 302(b)(1).

[28] ABA STANDARD 302(b)(2).

[29] ABA STANDARD 302(b)(3).

working with others outside of law practice.[30] We believe this experience should be given greater value, and we advocate revision of the standards by adding simple phrasing to require or, at a minimum, to encourage training and experience with members of professions outside of the legal field.

In 1989, the Council of the Section of Legal Education and Admissions to the Bar established a taskforce charged with narrowing the "gap" between law school and law practice. As part of its study, the taskforce identified and published The MacCrate Report in 1992 a list of fundamental skills and values lawyers must acquire before handling any legal matter.[31] The Fundamental Lawyering Skills listed include: Problem Solving, Communication, and Counseling.[32]

Although these skills are certainly conducive to collaboration with other professions, their focus in the MacCrate Report, as evidenced by their descriptions, is primarily on interactions between the lawyer and the client, not between lawyers and other professionals. For example, the skill of "Problem Solving" describes: "[a]ssessing whether some aspects of the plan require expertise in fields other than law and, if so [m]aking a judgment about whether it is desirable to retain or consult with experts in the pertinent field," taking into account the value and cost of expert assistance and the client's resources.[33] This interaction describes lawyer as litigator and advocate for client, and not lawyer as interdisciplinary problem solver. Under the skill of "Counseling," such terms as "Assessing the Perspective

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[30] For further discussion of this topic, *see* Anita Weinberg & Carol Harding, *Interdisciplinary Teaching and Collaboration in Higher Education: A Concept Whose Time Has Come*, 14 WASH. U. J.L. & POL'Y 16, 17 n.7 (2004).

[31] AMERICAN BAR ASSOCIATION SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (July 1992) [hereinafter "MacCrate Report"]. This report is named for Robert MacCrate, who chaired the Task Force that produced the report.

[32] *Id.* at 38-40.

[33] *Id.* at 146.

of the Recipient of the Communication" (Skill 5.1) and "Using Effective Methods of Communication" (Skill 5.2)[34] are also suggestive of collaboration skills, including knowledge of others' backgrounds and oral and written skills. But, without providing a context of working together with others, the implication is that these are all skills for a lawyer to improve his or her advocacy abilities, similar to other sections of the MacCrate Report to which it consistently refers. Skill 9.4 discusses "Developing Systems and Procedures for Effectively Working with Other People," but its focus is on law practice management, not working with other disciplines on a shared problem.[35] We suggest that an alternative context of the lawyer as collaborative problem solver be offered in the descriptions of these important skills.

This alternative context should also be represented in the report's description of "Fundamental Values of the Profession."[36] In particular, the value of "Striving to Promote Justice, Fairness and Morality" should incorporate lawyers working with other professionals to promote justice. The value of "Professional Self-Development" includes values of increasing one's knowledge of "other relevant disciplines" and reading about "new developments in the law and other relevant fields or disciplines."[37] We question whether "relevant disciplines" pertains only to disciplines relevant to law practice, such as forensic practice or business practice – disciplines which might enhance a lawyer's advocacy or office management skills. We suggest eliminating the term "relevant."

Both medical and legal professions have undergone studies by the Carnegie Foundation. The Foundation's text, Educating Lawyers, was just published in 2007.[38] Law professors have also published a 2007 text, Best Practices for Legal Education,[39] which

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[34] *Id.* at 173-74.
[35] *Id.* at 201.
[36] *Id.* at 207-21.
[37] *Id.* at 219.
[38] SULLIVAN, *supra* note 21.
[39] ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (Clinical Legal Education Association 2007), *available at* http://www.cleaweb.org/documents/ Best_Practices_For_Legal_Education_7_x_10_pg_10_pt.pdf

draws upon the findings of the Carnegie Foundation Report for Legal Education. Neither text discusses the need for training in interdisciplinary collaboration skills. However, in describing the six tasks required in educating professionals generally, the Carnegie Report authors, cited also in Best Practices, offer a generic set of skills which help in working collaboratively with other professionals. The Carnegie Report states:

> Across the otherwise disparate-seeming educational experiences of seminary, medical school, nursing school, engineering school, and law school, we identified a common goal: professional education aims to initiate novice practitioners to think, to perform, and to conduct themselves (that is, to act morally and ethically) like professionals. We observed that toward this goal of knowledge, skills, and attitude, education to prepare professionals involves six tasks:
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> 1. Developing in students the fundamental knowledge and skill, especially an academic knowledge base and research
> 2. Providing students with the capacity to engage in complex practice
> 3. Enabling students to learn to make judgments under conditions of uncertainty
> 4. Teaching students how to learn from experience
> 5. Introducing students to the disciplines of creating and participating in a responsible and effective professional community
> 6. Forming students able and willing to join an enterprise of public service[.][40]

[40] SULLIVAN, *supra* note 21, at 22 (cited in STUCKEY, *supra* note 39, at 19).

These abilities of engaging in complex practice, making judgments amid uncertainty, learning from experience, creating and participating in professional communities, and joining public service – are all necessary to effective collaboration. We urge both professions to place an emphasis on using these skills not only within but also outside of each profession to better support the concept of working with others on broader problems.

III. CONCLUSION

Despite this absence in our standards of explicit support for collaborative work with other disciplines, increasing numbers of law and medical students and graduates are working with each other on larger health issues. This work is focusing on actual current problems,[41] as well as on past and hypothetical issues.[42]

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[41] For example, the Community Law Project at California Western School of Law in San Diego has partnered with the University of San Diego School of Medicine Student-Run Free Medical Clinic to offer free medical and legal advice to patients who come to the Clinic. The school also offers a course, Problem Solving and Prevention in Healthcare, in which students work with other community members outside the legal profession to help resolve public health care issues. Other examples nation-wide include: the Medical-Legal Partnership for Children in Boston, LegalHealth in New York, the Health Law Partnership (HeLP) in Georgia, the Community Health Rights Education Project (CHRE) in Miami, the Center for Patient Partnerships at the University of Wisconsin-Madison, the Boston Medical Center Domestic Violence Project, and several collaborative programs at the University of Maryland School of Law. These programs combine the skills of doctors and lawyers to treat children and families in need. For further descriptions and citations to these programs, *see* Linda Morton, *A New Approach to Health Care ADR: Training Law Students to be Problem Solvers in the Health Care Context*, 21 GA. ST. U. L. REV. 965, 967-68 n.7 (2005).

[42] Among these interesting interdisciplinary offerings are those of Prof. Charity Scott at the Georgia State University College of Law and Prof. Liz Tobin Tyler at Roger Williams University Law School. Prof. Dale L. Moore at Albany Law School wrote a detailed description of his seminar in which law students and residents work together on hypothetical issues drawn from actual prior hospital cases. *See* Dale L. Moore, *An Interdisciplinary Seminar on Legal Issues in Medicine*, 39 J. LEGAL EDUC. 113 (1989).

Although these programs are receiving institutional support from their law schools, or from funding outside the law school, our own professional standards are lagging behind. At one point, the medical and legal professions were relatively autonomous, if not protective of their separate spheres of knowledge.[43] It is now time for the professions of law and medicine to each acknowledge and articulate the necessity of the collaborative alliances in their standards.

We believe these efforts to encourage interdisciplinary collaboration will help initiate and support effective alliances to help cure systemic health issues. The need for such collaboration is unquestionable. As the American Academy of Pediatrics recently advocated in their 2005 Policy Statement, "[There must be] a commitment to use a community's resources in collaboration with other professionals, agencies and parents to achieve optimal...quality of service for all children." [44]

With this call in mind, we urge our own professions of law and medicine to engage in this commitment, and to reform their professional standards accordingly.

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[43] David A. Hollander, *Interdisciplinary Legal Scholarship: What Can We Learn from Princeton's Longstanding Tradition?*. 99 LAW LIBR. J. 771, 774 (2007).

[44] *2005 Policy Statement of American Academy of Pediatrics: Committee on Community Health Services*, 115 Pediatrics 1091 (2005).