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Op-Ed

The Teaching of Law in Medical Education

Nirav D. Shah, JD

The influence of law on the practice of medicine in the United States has required physicians to become as skilled in understanding the regulatory nuances of Medicare as they are in treating diabetes. Today a physician must not only be able to communicate with patients and diagnose illness to be successful, he or she must also be well-versed at navigating the complex legal and regulatory systems that now govern what type of medical care will actually be delivered to a patient. Sadly, American medical education does an inadequate job of preparing physicians for these delivery system challenges.

Many of today's practicing physicians are ill-equipped to handle the legal, regulatory, and business realities of modern medical practice [1]. They struggle with complex reimbursement schemes and enter into contracts that are disadvantageous to their practice, at the least, and illegal at worst. Many report job dissatisfaction stemming from their confusion over Medicare statutes [2], and they frequently report feeling helpless when insurance companies deny payment for proposed care. Some surveys show that practicing physicians have a poor and often incomplete understanding of basic principles of malpractice law [3]. They often learn the bare necessities of managing a medical practice "on the job" or from colleagues who themselves have suffered first-hand from various pitfalls [4], and, as a result, they expose themselves to staggering liability. Physicians also report an inability to navigate the legal system and a persistent fear of lawsuits [5, 6]. Surveys show that physicians are ignorant of even basic risk-management principles such as when to disclose a patient's infectious disease status [7] and how to manage obligations to adolescent patients [8].

But physicians themselves are not solely to blame for this lack of knowledge. Much of the fault lies with the medical education system. Medical education in the United States does a poor job of training physicians about the legal realities of medical practice. Influenced by the bioethics movement of the last 3 decades, medical schools and residency programs have incorporated formal ethics education into the curriculum, but they have yet to formalize any instruction in the malpractice, business, and regulatory issues that dominate medicine. This tradeoff—emphasizing ethics rather than law—results in a system with precisely the wrong priorities. Few ethical dilemmas faced by physicians require specific ethics training to resolve, but every physician will face some legal dispute where an awareness of the issues and how to approach them would be invaluable.

Evidence that training in ethics changes medical students' behavior is weak [9, 10], whereas even a brief exposure to legal issues can improve physician compliance and, ultimately, professionalism. Medical schools and residency programs should consider law as the cornerstone for teaching ethics. To be sure, the goal is *not* to turn young doctors into amateur attorneys. Rather, it is to educate physicians about the legal backdrop of the regulatory, business, malpractice, and ethical questions they will surely face.

The Current State of Legal Education in Medical Curricula

Presently only 37 percent of U.S. medical schools offer formalized coursework dealing with the legal or regulatory issues in medicine [11]. Several schools incorporate “medical jurisprudence” into another course, typically the first-year ethics or a health economics course [11]. Yet even when law and legal issues are raised, the discussion focuses on malpractice as opposed to regulatory and enforcement issues.

Medical students are clamoring for more exposure to law and medicine [11]. The same survey that showed that less 37 percent of medical schools teach law and medicine in any formal way also found that 82 percent of medical students wished their medical school offered a class on “legal pitfalls in practice” [11]. Why the discrepancy between demand and supply? For one thing, it is difficult to find qualified health law professors to teach in medical schools. The field is highly specialized, and attorneys who possess the interest and professional qualifications are scarce. Further, it has been my experience that there is a reluctance within medicine to discuss practical legal and business realities of medicine—particularly when teaching medical students. For example, when the patient-physician relationship is discussed in ethics classes, the degree to which fear of malpractice might drive patient care is minimized.

Consequences

The lack of legal exposure in medical education carries consequences. For one, it leads to a deep suspicion and mistrust among physicians of the legal and regulatory systems. It has also been shown that physicians who don't understand the broad strokes of the legal landscape are prone to make risk-management decisions based on lore rather than fact—leading to the much-maligned practice of “defensive medicine” [12]. And defensive medicine carries its own costs, financial and otherwise. It leads to unnecessary testing, hospitalizations, and potentially harmful false-positives [13, 14]. In an era where evidence-based medicine is the basis for the standard of care, physicians who practice defensive medicine out of a misunderstanding of the law do a disservice to their patients.

Law, then, should form the framework for ethics education. Not everyone agrees. Sokol, for example, argues that “law often represents the lowest acceptable measure of morality” [15]. That is perhaps true, but it doesn't alter the argument for teaching law. If anything, the statement that law is the “lowest measure of morality” only means students should know about the law's contours so that they can strive for a

higher mark. Law sets the floor of acceptable behavior, so talking about ethical responsibilities without knowing that minimum standard is unhelpful. To be sure, physicians should not equate ethical behavior solely with what the law allows. Rather, they should base their behavior on an ethical code they feel comfortable with—whether personal or professional. But without first knowing what the low point of acceptable behavior is, it's impossible to aim higher.

Proposal

A medical school curriculum that addresses the legal context of medical practice should focus on raising awareness of a wide range of subjects and should train students to recognize areas where medical practice and law can come into conflict. Such a curriculum should aim to give medical students concrete tools with which to enter medical practice, with the hope that these tools will help them avoid common legal pitfalls [16].

A legal medicine curriculum should be broadly divided into three main areas of interest: laws pertaining to the practice of medicine, laws pertaining to ethical conduct, and regulation.

Laws pertaining to the practice of medicine. This area includes topics such as negligence, standards of care, malpractice, and HIPAA (the Health Information Portability and Accountability Act). These subjects are the most relevant to physicians' daily practice and are also the areas where myth often parades as fact. An examination of the laws that pertain to medical practice should begin by introducing basic concepts from tort law, such as duty to patients, breach of duty, causation of injury, and damages, and then move on to more detailed topics such as risk management and documentation. The legal aspects of the patient-physician relationship should also be covered. In particular, this curriculum should address questions about when a patient-physician relationship legally begins, how to “fire” patients, and how to manage and disclose medical errors. In my experience as a teaching assistant for first-year medical student ethics courses, the concerns that give the students the most distress are, not surprisingly, the questions that ethics teaching poorly equips them to handle [17].

Laws pertaining to ethical conduct. By “the law of ethics” I refer to the jurisprudence behind prominent ethical debates. For example, it's difficult to fully appreciate a physician's role in the debates surrounding end-of-life care without first understanding the legal definitions of death, brain death, assisted suicide, and futility. These areas are deeply rooted in law, and, if they are viewed as purely ethical decisions, the role that courts and legislatures have played in their evolution is overlooked.

Topics that have a clear ethics component are often informed by a wide body of law ranging from legislative statutes and agency regulations to judicial opinions. Though the law does not answer many thorny dilemmas such as how transplantable organs should be distributed, it does provide parameters within which the debate should take

place. For example, recent changes to the National Organ Transplant Act have legalized the previously contentious issue of “kidney swapping” [18]. While the legalization of such a swap doesn’t eliminate the ethical question of whether such the swap *should* be allowed, it does refocus the debate on how the procedure might be carried out.

Regulation. Regulation cuts the broadest swath in medical jurisprudence, encompassing all areas where the government interacts with and regulates the practice of medicine [19]. While physicians typically conceive of “the law” mostly in terms of malpractice, the law that they will interact with most during their careers is in the form of regulation. Regulatory agencies from the FDA to the Department of Justice exercise great power over the practice of medicine in the United States. Statutes like the False Claims Act and the Stark Laws control billing and referral matters, antitrust laws govern physician practices and investment ventures, federal prescribing guidelines govern how physicians can prescribe controlled substances. Yet health law courses seldom address these topics, even though they are arguably more important than malpractice.

Conclusions

The current system of medical education fails medical students and trainees by not providing any systematic approach to thinking about the legal issues they will face. Many curricula focus, instead, on ethics, which leaves students without clear guidance on the legal matters they will certainly encounter. While ethics education is important, it should be taught in concert with law. Students should leave medical school with an appreciation for how the legal system works and how to navigate it. Such awareness may lead to fewer decisions made on the basis of myth and greater comfort in practicing evidence-based medicine over defensive medicine.

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always disclose all errors, no matter how small” (not necessarily legally required and, today, a matter of risk management policy and professional consensus). See, for example, Nguyen AVT, Nguyen DA. *Learning from Medical Errors: Legal Issues*. Abingdon, UK: Radcliffe Publishing LTD; 2005.

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Nirav D. Shah, JD, is a 2007 graduate of the University of Chicago Law School and will receive his MD from the University of Chicago Pritzker School of Medicine in June 2008.

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