

# The inequities in the ethics of profits for the physician

By Richard R. Grayson, MD

The Judicial Council of the AMA seems to be in the precarious position of applying a double standard of ethics to physicians. Either a single, rational standard of ethics should be accepted by all physicians, or else widespread evasion of newly considered principles can be expected which will produce far-reaching effects on the profession.

It was stated in *The AMA News'* June 16th editorial on laboratory charges that a physician "is not engaged in a commercial enterprise and he should not make a markup, commission, or profit on the services rendered by others."

This statement by the Judicial Council is a dangerous one because it contains essentially indefensible premises. However, even should these controversial premises be accepted for the sake of the argument, the glaring double standard of application still exists.

These inequities are partially enumerated:

1. A clinical pathologist who owns or operates a clinical laboratory profits from the services of those he employs.

2. A radiologist who owns or operates a clinical radiology laboratory profits from the service of the technicians and radiologists he employs.

ing scheme and a patent (but apparently ethical) evasion of the ban on fee-splitting.

These inequities in the standards of ethics now exist among us, apparently by mutual consent. This being the case, it would appear that the premises for our standard of ethics must be re-examined. Perhaps we should admit that a physician is engaged in a commercial enterprise and

## personal opinion

that he should make a markup on the services of others. If profiting on the services of others is what is widely practiced in a free enterprise economy, then what good does it do to take out of context one iota of profiteering and say that profiting itself is unethical? Are we covering our eyes to the real world?

**HOWEVER**, simply adopting a more rational set of premises in our ethics will not erase the essential problem to which the Judicial Coun-

Now, we may not care what our image is so long as we are surviving and so long as our patients seem to like us and so long as we really try to practice medicine in an honorable fashion. However, the image, if in existence, will produce results counter to our need for a free enterprise medical system. In other words, the image of a grasping profession will cause society to turn upon us with rules and regulations to curb our incomes. This will surely alienate both sides and produce the coup d'etat of state control.

**IF A BAD IMAGE** is what will be our downfall, then what shall we do? First, we must adopt a rational philosophy and a single standard of ethics. If we approach the dragon of overcharging on the donkey of false premises (that medical practice is not a commercial enterprise) and in so doing willfully ignore the facts of life, we will surely fail of our objective due to internal dissension, cynicism, and confusion. In other words, as soon as we should confess that we are not in the capitalistic system, then the collectivists will have won the game.

However, if we adopt the objective view that we now have a virtual monopoly by virtue of enfranchisement from the community at large and that we must not offend those who enfranchise us for fear of losing

If the medical profession sees itself as a company which has been licensed by the community at large to have sole jurisdiction over the community in a certain area, then we can begin to see a way out of our philosophical jungle. It becomes apparent that what we have is a large commercial medical enterprise which has a contract with the entire community. A contract is an agreement in which a mutuality of obligations exists. The public has said, "We wish to purchase certain things and services from you doctors and we do not wish to buy these items from anyone else."

We physicians, in turn, have said, "We wish to provide those things and services which you desire at a mutually agreed price which shall be flexible in our free enterprise system." The public and the profession have therefore gotten together and have written up a sort of social-business contract and the contract was signed by both parties. This contract is in evidence by a symbol which each doctor receives in the form of his license to practice medicine and surgery.

**NOW IT WOULD** appear that a contractual dispute exists. Some members of the public are saying that some members of the profession are not living up to this mutuality of obligations and agreements in this contract and that a new contract

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one-year or a five-year trial period or as a locum tenens or as a simple employee and pays that physician a fixed annual wage ordinarily profits from the services of these physicians.

4. A partnership of doctors, such as in a clinic, which owns its laboratory, x-ray, and physiotherapy units, which then hires technicians and even an outside radiologist or other physician, and then charges its patients usual and customary fees for various tests is most certainly in the position of exploiting the services of others for personal profit. The fact of partnership is inconsequential.

5. A partnership of physicians, such as a clinic, which distributes its income among the partners in such a way that the senior members of the clinic get a percentage out from the junior members because of "seniority" is exploitation of the services of other doctors for profit.

6. A partnership of doctors, such as a clinic, which in its income distribution formula rebates a fixed percentage of a surgical fee to the referring clinic physician even if he does not assist in the operative care of the patient is an obvious profiteer-

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*Richard R. Grayson, MD, practices internal medicine in St. Charles, Ill.*

dicial Council and the medical profession as a whole are attempting to solve the problem of unfair exploitation and excessive overcharging for the utilization of the services of others. Even here we run into a semantic thicket; what is unfair and what is excessive? In a free economy, price is determined by the law of supply and demand and the freedom of competition.

This means simply that when something is overpriced, the consumer goes elsewhere. But what happens when, as in today's practice of medicine, the consumer cannot go elsewhere? Then the price, as in other enterprises, goes up. Normally, other individuals in a free economy, seeing the profits to be made in a line of endeavor, will tend to enter that line of endeavor and will increase the supply of the commodity, thus providing the competition that will drive the prices down.

PHYSICIANS ARE at a crucial period in the economy of the country. We are a shortage during a time of increasing demand. Our profits are high and other citizens, being envious, are trying to lower our profits by one means or another and are also, however, trying to enter our ranks. It is the latter, the increase in our numbers, which will be the only rational way for generally reducing medical fees and overcharging for medical services.

Saying that an increase in the numbers of doctors will solve the problem of high medical costs is still not a satisfactory remedy for the problem that faces us. The problem is that we give ourselves a bad image when we seem to overcharge and when we seem to exploit the illnesses of our patients in order to become wealthy.

then we can stay clear the frustrations of living with the lie of non-commercialism.

THE NOTION OF monopoly requires elaboration; there is a shortage of physicians and an overabundance of patients. This is what exists. This is not to say that we caused this situation or, indeed, that anyone is responsible. The cause is buried in the multifold factors which make up our socioeconomic scene. The causes at this point in time and for the purposes of this essay are irrelevant. The solutions which are develop-

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ing for this problem are also irrelevant to this discussion. It is enough to recognize that a virtual monopoly on the provision of medical services to the sick does exist and that this monopoly is the property of the community of active and licensed physicians who are the only ones who may exercise the trading of certain healing services with the public. Note well the world "trading".

Once it is seen that the public we serve is the same public which has granted us this franchise, then it is apparent that this same public can remove or modify this franchise in the same way that the public can disenfranchise a utility company or a telephone company which services a single area.

the profession are saying that if the profession does not stop offending the public a new contract will be forced upon us which we will not like.

The concept of contracts seems to be a rational one that has applicability in law and in logic and which can help us in our decisions on ethical principles.

In other words, we can conclude that the medical profession is a commercial enterprise, that it acts like a utility company at large, that it has a sort of contract with the public, that the profession has certain obligations of performance under this enfran-

chisement, that the public in turn has an equal obligation to pay for these performances, and that the payment for these services, while essentially determined by the law of supply and demand, can be and in fact is regulated by the mutual agreement of both parties to the contract.

Once the medical profession sees itself as a dignified commercial enterprise which operates in a business-like and honest fashion according to well-established rules of contracts with the public and starts being honest with itself about the nature of profit and about the realities of life then we can approach our public relations problems from an objective, coherent, and defensible framework which will repel the forces of state collectivism.