GUIDELINES OF CONDUCT IN FORENSIC PRACTICE

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ABSTRACT

As the profession of chiropractic grows in stature within our society, the morality of each chiropractor's conduct will be increasingly examined and scrutinized by the public, the media, the government and the profession itself. Immoral conduct occurs not by just a few unscrupulous individuals, but by a host of apparently good, successful professionals who lead what appear to be exemplary private lives. Recent increasing examples of professional and corporate moral decay as reported by chiropractic state boards, in print media, etc., should spur chiropractic colleges to make determined efforts to re-emphasize ethics as part of the core curriculum. Ethical judgments depend upon both the decision making process itself and the experience, intelligence and integrity of the decision maker. The College on Forensic Sciences (CFS), a subsidiary of the American Chiropractic Association's (ACA's) Council on Chiropractic Orthopedics (CCO), developed a guideline of conduct to assist forensic examiners in making decisions in their every day subspecialty practice. Guidelines provide guideposts that can be helpful in assisting forensic examiners in evaluating the circumstances they are encountering and providing possible approaches that may be taken in addressing the ethical issues involved. (J Chiropr Med 2004;3:63-65)

KEY WORDS: Chiropractic Physician; Forensic Examiner; Forensics; Guidelines; Ethics; Medicolegal

INTRODUCTION

Classically the only professions were lawyers, clergy and physicians. A profession is a group who "professes" specialized knowledge. Within the chiropractic profession are specialties (orthopedics, rehabilitation, sports, etc.) and subspecialties (forensics). In the medicolegal arena, the forensic examiner invariably will be involved in the exercise of expert judgment and discretion in the performance of evaluative services. Where do forensic examiners look for guidance in determining the most appropriate course of action to follow in the perfor-

mance of evaluations (independent medical examinations (IMEs), functional capacity evaluations (FCEs), Department of Transportation (DOT), etc.)?

As the profession of chiropractic grows in stature within our society, the morality of each chiropractor's conduct will be increasingly examined and scrutinized by the public, the media, the government, and the profession itself. Immoral conduct occurs not by just a few unscrupulous individuals, but by a host of apparently good, successful professionals who lead what appear to be exemplary private lives.

Professional ethics are molded and shaped by three identifiable attributes. First is development of the professional as a moral person. Next is influence on the professional by their educational and practice environment, most significantly those principles displayed by their instructors (chiropractic college and postdoctoral) and mentor (where have they gone in chiropractic?) models. Given the specialized nature of a professional's skills, it has always been assumed that only another member of the profession is capable, from an intellectual and professional-skills basis, to pass judgment upon the conduct of a professional. Thus, the third attribute is those standards developed by the various professional societies and regulatory authorities that chart a path for moral conduct.

Moral character is shaped by family, religion, peers, education, and society long before an individual enters professional practice. It may be argued that a person of good moral fiber, simply would not cheat. In a perfect world, we would go no further. In reality, however, moral development is an unsolved problem at home, at school, at the house of worship, and in practice. Two career families, television and movies, video games, and the virtual demise of family gatherings (for many reasons) as a forum for discussing moral issues have clearly diminished family influence over basic moral development. We certainly should not presume that our battered school systems can be a substitute for the family unit. Even organized religion appears to be weaker than it once was and we cannot expect religious instruction to strengthen people against temptation.

Instruction in ethics at chiropractic colleges and universities is even more remote, with relatively sparse cur-

riculum inclusions and chiropractic instructors and clinicians choosing to teach applied ethics through course content and clinic intern or externships. Recent increasing examples of professional (boundaries, etc.) and corporate (insurance fraud, multi-discipline practice, etc.) moral decay as reported by chiropractic state boards, in print media, etc., should spur chiropractic colleges to make determined efforts to re-emphasize ethics as part of the core curriculum. This re-emphasis should be integrated into didactic instruction (jurisprudence, ethics, etc.), within the clinical portion of the curriculum and within the clinics (boundaries, patient/examinee respect, billing, reporting, etc.). While such instruction in ethics is important, it is our strong opinions that no matter how much chiropractic colleges and universities expand their commitment to instruction of ethical behavior, the greatest education in professional ethics will occur in the chiropractic colleges' clinical training (internships, externships, proctorships and residencies) and chiropractic offices where graduates become associates.

Making an ethical decision is easier when facts are clear and choices are well defined; it is more difficult when the situation is clouded by ambiguity, incomplete knowledge, multiple points of view, financial pressures, and conflicting objectives. In such situations, ethical judgments depend upon both the decision making process itself and the experience, intelligence and integrity of the decision maker. Perhaps the graduates' high student loan and practice start-up debt, lack of preparedness or inability to practice within a managed care environment push them for maximization of financial return. Certainly the rampant consumerism of American society encourages the desire to go beyond paying off debt and seek great wealth. These identified issues then become major obstacles to achieving higher standards of ethical practice and lead to the professional and corporate moral decay described earlier.

Therefore, making ethical decisions calls for certain qualities that can be identified and developed within individuals. First is the ability to recognize ethical issues and think through the various consequences of alternative solutions. Second is the self-confidence to seek out different points of view and decide what is right at a given time and place under a specific set of circumstances. Last is the strength and moral courage to make decisions to carry through with an ethical course of action even when it is easier and potentially more rewarding in the short term to do otherwise. The professional culture which surrounds the young and growing professional may well be the dominant environment that shapes and hones these qualities.

Written standards also exist to help the forensic examiner chart a path of ethical conduct. Those of us who practice as diplomates (forensics, orthopedics, rehabilitation, sports, etc.) need to look no further than our trade and professional associations or societies to find the canons considered by our profession to be the points of light for ethical conduct. Similar rules of ethical conduct are embodied within the laws by which we are licensed (when was the last time that you read your scope of practice?).

Statutes, regulations, laws, court and examining board decisions, etc., certainly provide a basis to make certain decisions concerning behavior. However, the law does not address many issues concerning appropriate professional conduct. Another possible resource might be colleagues or fellow diplomates. While sometimes these colleagues might be immeasurably valuable as sounding boards, many times though, they lack the necessary experience or expertise to provide competent feedback. Additionally, the feedback might be biased or prejudiced by some fact or circumstance. For that reason, the College on Forensic Sciences (CFS; www.forensic-sciences.org), a subsidiary of the American Chiropractic Association's (ACA's) Council on Chiropractic Orthopedics (CCO), developed the following guidelines of conduct to assist forensic examiners in making decisions in their every day subspecialty practice.

1. The forensic examiner shall perform duties in accordance with the applicable law(s) and shall observe the highest of moral principles, evidence-based or best practices standards and policies of professional practice.
2. The forensic examiner shall at all time act with integrity and truthfulness.
3. The forensic examiner shall observe diligence in the discharge of professional responsibilities.
4. The forensic examiner shall exhibit competence at all time in the discharge of professional responsibilities.
5. The forensic examiner shall at no time divulge confidential information in an inappropriate or unlawful manner and shall exercise the care required for confidentiality and privacy consistent with the applicable legal jurisdiction.
6. The forensic examiner shall not maliciously injure the reputation or professional practice of providers, employers, insurers, claimants, or other parties.
7. The forensic examiner shall divulge and report appropriately when faced with potential conflicts of interest.
8. The forensic examiner shall try to remain unbiased and objective, so that adjudicator or "trier of fact" is

served by accurate determination of the facts involved.

9. The forensic examiner shall thoroughly review and analyze the evidence in a case, to conduct examinations based on established scientific principles, based on facts and evidence-based knowledge, and render opinions which have a demonstrably reasonable basis and within examiner's adequate qualifications.
10. The forensic examiner shall not intentionally withhold or omit any findings or opinions discovered during a forensic evaluation or review that would cause the facts of a case to be misinterpreted or distorted.
11. The forensic examiner shall never misrepresent credentials, education, training, experience, or membership status.
12. The forensic examiner shall refrain from any conduct that would be adverse to the best interest and purpose of the College on Forensic Sciences (CFS), Council on Chiropractic Orthopedics (CCO) and/or the American Chiropractic Association (ACA).
13. The forensic examiner shall respect the rights of the examinee and other participants, and treat these individuals with dignity and respect.
14. At the forensic medical examination, the forensic examiner shall:
 - A. Introduce himself/herself to the examinee as the examiner.
 - B. Advise the examinee they are presenting for an independent medical examination, and the information provided will be used in the assessment and presented in a report.
 - C. Confirm with the examinee with the name of the entity requesting the examination.
 - D. Advise the examinee that no treating provider/patient relationship will be established.
 - E. Confirm informed consent and explain the examination procedure(s).
 - F. Provide adequate draping and privacy if the examinee needs to remove clothing for the examination.
 - G. Allow a family member or friend to attend non-psychiatric portions of the examination, if requested by the examinee and if the other person is not disruptive or interferes.
 - H. Refrain from derogatory comments.
 - I. Close the examination by telling the examinee that the examination is over and ask if there is

further information that the examinee would like to add.

15. The forensic examiner shall be prepared to address conflict in a professional and constructive manner.
16. The forensic examiner shall never accept a fee for services, which is dependent upon writing a report favorable to the referral service.

Professional guidelines of conduct reflect basic norms of conduct that exist within a particular subspecialty field and provide general guidance relating to a variety of issues. Most guidelines of conduct do not provide answers or solutions to ethical dilemmas faced by forensic examiners. Guidelines alone are generally not sufficient to provide precise guidance on specific questions that arise. They do, however, provide guideposts that can be helpful in assisting forensic examiners in evaluating the circumstances they are encountering and providing possible approaches that may be taken in addressing the ethical issues involved.

Supreme Court Justice O'Connor once penned, "One distinguishing feature of any profession is that membership in that profession entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market. Both the special privileges incident to membership in the profession, and the advantages those privileges give in the necessary task of earning a living, are the means to a goal that transcends the accumulation of wealth. That goal is public service."

Ethical standards of practice have never been more besieged than they are today. Those with strong moral fiber, a dedication to professional integrity, and the ability to reason soundly must find the power to resist the attack. Developing contemplative guidelines of conduct along with the adherence to that guideline will be vitally useful in that process. These various rules of professional conduct, and the disciplined enforcement of these rules, are important. They do not, however, contain the final emotional power of commitment.

REFERENCE

1. Guidelines of Conduct, College of Forensic Sciences, www.forensic-sciences.org