

2010

# The Hundred-Plus-Year War between Physicians and Attorneys: Peace in Our Time

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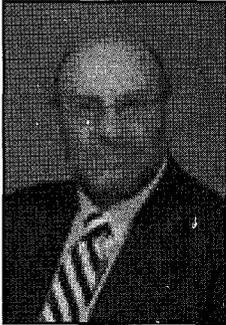
### Recommended Citation

Marshall B. Kapp *The Hundred-Plus-Year War between Physicians and Attorneys: Peace in Our Time*, 19 *Annals Health L.* 189 (2010).  
Available at: <http://lawcommons.luc.edu/annals/vol19/iss1/36>

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## The Hundred-Plus-Year War Between Physicians and Attorneys: Peace in Our Time?

*Marshall B. Kapp, J.D., M.P.H.\**



As the other articles in this special issue of the *Annals of Health Law* insightfully discuss, many significant changes have taken place, both by evolution and revolution, in the world of health law in the twenty-five years since the Beazley Institute's important arrival on the scene. However, one of the changes that has *not* taken place (at least has not changed enough), during the past quarter century is an easing of the historical level of distrust and animosity existing between the medical and legal professions, both organizationally and in terms of individual practitioners.<sup>1</sup> If anything, that situation has worsened over time. Many attorneys, particularly members of the plaintiffs' personal injury bar, continue to characterize too many physicians as avaricious business people more intent on maximizing personal profits than faithfully serving vulnerable people. Conversely, many physicians envision the legal environment within which they are compelled to function as one made unduly precarious, both for the physicians and their patients, by a legal profession too expansive in numbers and too deficient in adherence to professional ethics and public service.

The pejorative perceptions enduringly (perhaps increasingly) held by members of the legal and medical professions regarding one another, and the resulting psychological tensions and adversarial political and cultural battles in which the respective professions engage, exact important tangible consequences. Even when, as frequently occurs, the anxieties and apprehensions each of the respective professions derive from its counterpart are erroneous or exaggerated, the prejudices produced regarding the brother (in the sense of biblical characters Cain and Abel) profession generally are

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1. Sandra H. Johnson, *Regulating Physician Behavior: Taking Doctors' "Bad Law" Claims Seriously*, 53 ST. LOUIS U. L.J. 973 (2009); Peter D. Jacobson & M. Gregg Bloche, *Improving Relations Between Attorneys and Physicians*, 294 JAMA 2083 (2005).

sincere, powerful, and deeply entrenched. The cross-professional enmity is often so primitive and visceral that it makes any rational discourse and debate impossible.

This strained cross-professional dynamic sometimes brings about positive developments; for example, it may foster fuller and more timely healthcare provider/patient/family communication that exerts a salutary impact on patient rights and well-being. In other situations, though, anxiety-inspired defensive professional practice can have negative effects on the quality of medical and legal services received by the individual who is both the attorney's client and the physician's patient. Those negative effects may carry over to the individual's quality of life more broadly. Persons who are potential consumers of both legal and medical services are most at risk—both as clients and patients—when, as happens too frequently, their attorneys and physicians focus primary attention on their own respective professional interests and prerogatives rather than thinking and acting in accordance with a client/patient-centered paradigm.

Movement of the legal and medical communities toward a client/patient-centered worldview is a valuable goal for the health law enterprise to pursue over the next quarter century.<sup>2</sup> Up to this point, regrettably, the educational establishment responsible for preparing future legal and medical professionals for clinical practice, research, and policy leadership positions has not exactly done exceptionally well in inspiring the two professions to move toward this desirable client/patient-centered paradigm. Many law schools have established well-regarded health law centers, institutes, and programs. However, those entities have tended to concentrate their teaching and scholarship mainly on anticipating and responding to the professional self-interests of current students *qua* future attorneys who will devote their careers either to or else regulating healthcare providers, or counseling healthcare providers about techniques for risk management and legal system minimization or avoidance. In a similar vein, Departments of Medical Humanities, or their equivalent in medical schools, have a primarily professional, rather than a patient, orientation in their legal components, functioning in large part as an information/misinformation source, exacerbating future physicians' fears of the menacing legal world awaiting them in clinical practice or biomedical or behavioral research pursuits.

Thus, it is sad but accurate to acknowledge the presently unmet need, which must be seriously addressed as part of the continuously improving health law world toward which attorneys and physicians ought to strive. This need is for an academic initiative predicated on a fundamental

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2. Charity Scott, *Doctors as Advocates, Lawyers as Healers*, 29 *HAMLIN J. PUB. L. & POL'Y* 331 (2008).

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commitment to serving client/patient-centered interests by encouraging active collaboration of the legal and medical professions aimed toward that end. It is with that mission in mind that in 2010, Florida State University created the Center for Innovative Collaboration in Medicine & Law, as a joint institutional project of the FSU College of Medicine and the FSU College of Law.

The Center's mission is to foster the development of cooperative and collaborative approaches to the life challenges facing individuals—virtually everybody at some time in their lives—who depend upon the services of legal and medical professionals. The Center is client/patient-centered, because both of the two learned professions of law and medicine stand in a fiduciary relationship to their clients/patients and are thereby legally and ethically obligated to advance the best interests of those individuals rather than their own self-interests. The Center is dedicated to crafting ways for attorneys and physicians, both individually and through their formal professional organizations, to work together to more effectively and efficiently satisfy the actual and foreseeable medical, financial, emotional, and social needs of clients/patients and their families. The Center is designed to act ideally as a “solution shop”—an objective, honest broker joining together scholars and practitioners with legal, medical, and other pertinent types of expertise, to think outside the narrow traditional models or “boxes” of the individual professions that currently constrain the development of interprofessional experiments.

Through a structured process of interprofessional collaboration, the expected result will be the invention and perfection of innovative methods to productively and proactively attack complex issues challenging the contemporary American healthcare system (or marketplace, for those who would characterize the way in which health care is now delivered in the United States as such). Interprofessional analysis and intervention will be directed toward both the macro (social policy making and implementation) and the micro (individual client/patient care) levels. The intended immediate and eventual audiences or consumers of the Center's efforts will be individual medical and legal practitioners, organizational leaders within the medical and legal communities, and public policy decision makers, enforcers, and influencers in each branch of the federal and state governments.

This incipient Center will attempt to achieve its mission through proactive involvement in all three legs of the academic stool. Profession-specific and interdisciplinary teaching activities will entail, among other things: the inclusion of relevant course material and experiences in current courses in the Colleges of Medicine and Law, as well as other academic units in the university; both regular and intermittent participation of faculty members from one academic discipline or profession in courses conducted

in other units; the development of new profession-specific and interdisciplinary courses, featuring interprofessional, collaborative role modeling for students; continuing education of medical professionals in both medical jurisprudence (i.e., the legal regulation of healthcare delivery and financing) and forensic medicine (the presentation and utilization of scientific evidence in legal proceedings to help resolve legal questions such as cause or time of death or whether a physician has breached a duty of care owed to a patient by practicing at a sub-standard level); and continuing education of attorneys concerning the process of medical analysis, decision making, and treatment delivery.

In the sphere of scholarship, faculty and staff affiliated with the Center from the College of Medicine, College of Law, and other academic units, anticipate delving—both separately and in interdisciplinary teams—into such areas as: the present tort system and viable alternatives for resolving patient claims of professional misfeasance; the usefulness of therapeutic jurisprudence as an analytic lens for examining the real life positive and negative effects of legal requirements, policies, and processes on the purported beneficiaries (i.e., clients/patients) of those requirements, policies, and processes,<sup>3</sup> including the actual impact on access to and the affordability of care, pharmaceuticals, and other medical technologies for consumers; the effectiveness of various advance healthcare planning and documentation strategies in promoting patient autonomy and quality of care for the dying and critically ill; methods for expanding opportunities for patient self-control of medical management and financing; strategies for enhancing the ethical and medical value—as opposed to just the narrow legal risk management prophylaxis effect—of the informed consent process; and strategies for mutually enhancing and reinforcing professionalism generally among legal and medical practitioners.

The described teaching and scholarship activities will, it is hoped, achieve projected positive outcomes by working in synergy with service initiatives conducted by the Center. Illustrative potential service activities include child welfare and older adult advocacy projects, collaborative legal and medical informational fairs for consumers, formal and informal consultation and education for public policy makers, and public forums on major emerging issues with medical-legal implications.

The Beazley Institute will be fifty years old in the year 2035. Without a doubt, its anniversary celebration then will take place in a world that looks very different than our own in many respects, including the organization and financing of healthcare delivery and the options and resources available to patients and their medical caregivers. Professional training programs

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3. *See, e.g., PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION* (Dennis P. Stolle, David B. Wexler, & Bruce Winick, eds., 2000).

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will inevitably play a central role in whatever transformations occur. Whether the presently prevailing inward-looking, specific profession-focused paradigm of higher education will be replaced by one that is more concerned with the welfare and rights of people who are both attorneys' clients and physicians' patients will depend in large part on the success of academic center initiatives—such as the one described in this essay—in promoting innovative and positive collaboration between the medical and legal professions.

