

COMMENT

Orthopaedics is facing an ethical crisis

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In this comment I propose to share my personal views on the ethical crisis facing the orthopaedic profession. I believe that this crisis is due to a serious collapse of the moral sphere that had sustained it for many generations.

Though my perceptions are based on a longstanding interest in the subject and close observation of the American scenario, I suspect that similar changes are taking place in other nations of the world.

The genesis of the ethical crisis that began to unfold a few decades ago is not simple, since identified as well as not yet identified factors may have contributed to the current situation. However, I believe that evidence - to the point of certainty - exists to indicate that the loss of professionalism in our ranks, a staple in the foundation of the discipline, is most likely the result of the rapid ongoing transformation of orthopaedics from a profession into a business. The tenets of professionalism are being abandoned and replaced with the tenets that guide the business community. Profit is replacing the altruistic foundations that over the centuries led so many into the medical field (1,2,3,4).

The hunger for more financial wealth grew exponentially with the technological revolution that started in the 1960s began to surface. The important role that industry had in the development and implementation of new technology brought about a closer relationship between orthopaedic surgeons and the manufacturers of surgical products. However, this necessary and desirable relationship did not remain a balanced one for very long, and industry soon began to dictate the nature of the relationship (1,2,4,5,6). Its nearly hegemonic role is exemplified today by the control of education, which I have previously described by saying, "The education of the orthopaedist today is structured primarily to satisfy the marketing needs of industry." (5,7)

To deny this control is either naïve or hypocritical. The dependency of educational programmes on the industry, at the residency level and beyond, is enormous. It is virtually impossible to find a residency programme that does not depend on industry support for the conduct of many of its activities. Local, state, national and international societies and associations, almost without exception, allege that their functions cannot take place without this support. Their social activities, luncheons, cocktail parties, dinners, banquets and visiting speakers are paid for by industrial concerns. Foreign

orthopaedists in their thousands have their travelling and accommodation expenses paid by industry. The plethora of peer reviewed journals and the so-called "throwaway" medical magazines fill as much as 50 per cent of their pages with advertisements subsidised by industry.

Thousands of courses structured to promote new and old surgical instruments, products and techniques are held every year throughout the country. Though a registration fee is required, many residents and practising orthopaedists are admitted at no cost. Some of the most popular courses resemble bazaars where surgeons act more like vendors of products than professionals.

Surgeons are frequently taken to expensive restaurants, and residents are equally entertained with comparable support for sports events and dinners. The secretarial staff at orthopaedic surgeons' offices frequently have their meals paid for by industry representatives.

These examples of the degree of involvement of industry in the education of the orthopaedist are often claimed to be generous and unselfish gestures that improve patient care. Though it is true that much benefit is gained, these are not gifts but business transactions where the greatest benefit is gained by wealthy sponsoring industrial organisations (1,3,4,5,6,8).

The implant manufacturing companies, according to recent reports, spent US\$ 28 million in 2007, lobbying the federal government. Overall, it has been reported that companies spend US\$ 13 billion per year on direct-to-physician promotion every year in an attempt to encourage the use of their products. Their expenditures in this regard are easily compensated by the increased cost of their products, which has reached an outrageous level and is contributing to the aggravation of the health care crisis sweeping the country.

The consequences from this phenomenon have reached new heights because of the manner in which an increasing number of ethical infractions are being committed by pharmaceutical and implant manufacturing companies and physicians (1,4,6,7,8,9). These transgressions are inappropriate, sometimes illegal and other times corrupt. In order to shed further light on the issue, I will recount several personal experiences.

During my tenure as professor and chairman of the department of orthopaedics at the University of Southern California, I was visited by an industry representative offering me US\$ 250 for

every total joint implant that I and all members of the five hospitals affiliated with the department were to use. According to the industry representative, monthly cheques would be sent to my home so no one else would be aware of the "good deal." Upon my refusal to accept such a dishonourable proposal, he apologised, but not before stating that such deals were "made every day".

A few weeks later I was visited by the vice-president of a major surgical implant industry. He placed on my desk a velvet-lined box containing a brand new prosthesis, which he described as the "Sarmiento total hip prosthesis," allegedly developed by his engineers to represent my "philosophy." As I tried to inform him that I was not aware I had a philosophy, he reached into his pocket and produced a signed cheque of US\$ 250,000. The next step was to discuss royalties.

Two months after my refusal to accept the offer, pictures of the prosthesis appeared in various orthopaedic journals. When I asked the local vendor the name of the orthopaedist who had conceived the design, he gave me the name of a well-known professor in a mid-Atlantic university, adding that the implant represented his "unique philosophy" (4).

Another example of the power industry has gained over the years took place recently. I had written a book dealing with a variety of orthopaedic subjects, and was looking around for a publisher. A European publishing firm, allegedly of good reputation, offered me a proposal that included the publication of the book in English as well as Spanish. When the project was completed I was impressed with the quality of the books and proceeded to give the publishers the name of the various journals where the books could be advertised, as well as the names and dates of several meetings in the United States, South America and Europe where they could be exhibited.

However, while some of the meetings took place, my books were not exhibited. Neither were they announced in any of the journals. Concerned, I approached the publisher, but could not get a straightforward answer. Finally, through a junior member of the organisation I was informed that there were problems at the headquarters on account of comments I had made in the book that were "critical of Industry." I eventually found out that a major European pharmaceutical house, which had originally offered to donate 4,000 copies of the book to South American surgeons, had withdrawn the offer because of my critical comments on industry. I thought of initiating legal action, but then dismissed the idea. It was not worth my time and effort.

On one occasion I submitted a letter to the editor of a popular "throwaway" orthopaedic magazine commenting on problems that hip surgeons were having in the operating room during revision surgery because it was often impossible to identify the manufacturer of the implant being revised. I suggested that companies should develop a system that would allow the surgeon to identify the implant manufacturer. The editor informed me that the letter would be published the following month. But when the next issue of the magazine appeared, the letter was not there. The editor, a good friend of mine,

responded to my concern saying that the publisher had felt that since the magazine was supported by industry, the letter would not be published.

These personal experiences clearly demonstrate the degree to which unethical practices are gaining acceptance in many areas of the profession.

Orthopaedic organisations have in the past responded to ethical breaches among their members by publishing new codes of ethics and distributing them to the membership. Industry has responded by announcing its agreement with our representatives and producing new codes of ethics for their people. This pattern has been going on for the past 30 years. However, instead of matters showing improvement, the opposite has happened, and the situation has worsened exponentially over the years. Retreats held by the Academy of Orthopaedics, which included representatives from the industry, have failed to produce concrete results. Platitudes about the benefits derived from the industry's generosity and the resulting progress in patient care have won the day.

One cannot help but feel that those in the profession who indulge in unethical practices have concluded that there is nothing wrong in accepting kickbacks and other financial inducements. As a matter of fact, kickbacks are viewed by them as recognition of their talents and contribution to the profession. The relativistic philosophy that our society has enshrined so firmly in today's endeavours, which actually says, "Everything is okay," suggests that there is nothing morally wrong in such practices.

This pervasive ethos explains the ease with which traditional values are so often ignored. Advertisement by physicians of their services, long-considered inappropriate, is now done with impunity. Radio, television and the print media are often used in distasteful manners.

Under the guise of seeking protection from litigation in the event of a bad result, unnecessary and expensive tests, office visits and surgery are rampant. Government health care programmes and medical insurance companies have in turn reduced the reimbursement for services we provide. They have surmised that the medical community, apparently unwilling to assist in the reduction of costs of care and wanting to upgrade its income, will respond to lower reimbursements by increasing the volume of services. Though this conclusion is partly accurate, the reductions have been unreasonable in some areas.

The United States government has become aware of inappropriate, illegal and unethical practices committed by both the corporate industrial world and members of the medical profession, and has begun to take legal action. A formal investigation is ongoing and several companies have been identified. These companies have temporarily settled the issue, in order to avoid prosecution, by paying US\$ 311 million. Among the most egregious unethical practices identified by the government is giving surgeons bribes or kickbacks

to the order of millions of dollars for the use of products manufactured by industrial concerns, and assistance in marketing them (9). The prosecutors appear to be determined to pursue the investigation, and have stated their plans to identify and punish the companies and physicians involved. If the issue is not dropped as result of pressure from powerful interested parties, much good will have been done.

Morality cannot be legislated, but there are means available to ensure that high standards are held by most members of the orthopaedic profession. If professional organisations clearly set examples of integrity and commitment to excellence, and inform their members that transgressions may result in public exposure and suspension of membership, the current crisis could be significantly alleviated.

Specialty societies and local and regional orthopaedic organisations should assist in the implementation of new performance criteria by public exposure of those whose wrongdoing is documented, and cancelling their membership. They should also be persuaded to look carefully at the selection of their leaders, and prevent the election to high office of individuals with records of inappropriate behaviour (4,8).

Short of this drastic strategy, a resolution of the crisis will not take place. The economic consequences of the current trend will worsen to the point where draconian government measures will become a reality (3).

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