Conflicts of Interest and the Absence of Shame When the Price is Right

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In the last issue of the *Journal* I promised to say more about the paradoxical effect of the decision by the International Committee of Medical Journal Editors (ICMJE) to require disclosure of conflicts of interest by all authors.[1] We all might have hoped that this policy would discourage the payment to medical investigators of large consulting fees, lecture fees, and travel reimbursement for educational expenses, but it seems to have had the opposite effect. The routine disclosure of such payments has made them so commonplace that they often rise to exorbitant heights (in some cases over 7 figures) without arousing comment. Surely such astronomical compensation must influence the attitude of the recipients, even if—to be charitable—the influence is subconscious. And it seems naïve, if not illogical, to think that these fine-print disclosures at the ends of medical articles can help readers decide whether the authors are biased.

In considering how we have reached the current situation, I ask you to consider two famous concepts: The Banality of Evil and The Law of Unintended Consequences.

THE BANALITY OF EVIL

Hannah Arendt's 1963 book *Eichmann in Jerusalem: A Report on the Banality of Evil*, was based on her observations at the trial of Adolph Eichmann, the head of the Nazi Gestapo unit responsible for exterminating the Jews.

Of course there is no intentional evil in the topic of our concern in this commentary—the "small" matter of Conflicts of Interest (COI) in medical journals. Still, the subject does command our interest for the wider lessons it can teach us about our moral existence. (I hasten to acknowledge at the outset that many politicians have paid dearly for drawing a parallel between the Holocaust and *any* aspect of American life, but I am not a politician and hopefully this *Journal* is a forum for more rational discourse than is found in American politics.)

Arendt, thinking about how ordinary citizens could be persuaded to carry out gruesome duties, realized that the most hideously unthinkable acts can become banal if they are done repeatedly in an organized and systematic way until they become so routine as to be accepted as normal behavior and "the way things are done." Lest anyone think that it can't happen here in America, we need look no further than the institution of slavery, in which human beings were treated as property. That slaves were without human rights was so ingrained in our society and our laws that even slaves who escaped to free states had to be returned to their owners because slaves were, simply, property. Slavery was so normalized that with the notable exception of John Adams, most of the Founding Fathers owned slaves.

That sort of mass psychology was not only found in the distant past. May I remind you of the uncomfortable recent experience at Abu Ghraib, the Iraqi prison where prisoners were tortured by the American troops guarding them, without even the pretense of obtaining useful information. As William Faulkner said in *Requiem for a Nun*, "The past isn't dead. It isn't even past." If absolute evil can be made banal, surely it is easy to normalize mild moral compromises in society, since doing so doesn't require elaborate reconstruction of societal norms.

HIDING IN PLAIN SIGHT

Hiding in plain sight is actually a corollary principle of The Banality of Evil, and was at the core of my commentary in the last issue of the *Journal*. It simplifies Arendt's profound principle for the mild transgressions of quotidian life. If everyone is doing it, not only is it OK, but one isn't likely to get caught. And, unlike evil actions, even if one is caught, there is little or no social opprobrium because—after all—everyone is doing it. Such "sins" even have their own codes of conduct: driving over the speed limit is OK; driving under the influence is not. Overestimating certain business expenses on one's tax return is OK; failing to report income is not. Other examples abound.

Similarly, if every physician is compensated for working with a device or drug manufacturer, and every

medical article now has a series of disclosures at the end, why should we judge any of the authors badly?

THE LAW OF UNINTENDED CONSEQUENCES

A relevant example of this Law is the experience with corporate executive pay. As I wrote in the Spring 2007 issue of the *Journal*,[2] "critics of excessive executive pay relaxed in 1993 when Federal regulators finally forced companies to disclose details of pay and perks for top officials. Watchdogs assumed that the spotlight would deter corporate boards from granting unjustified raises. How wrong they were! Since then, the average pay for CEOs of large corporations has quadrupled! As the *Wall Street Journal* reported on Oct. 12, 2006, it turns out that disclosure has paradoxically pushed pay higher, because now that executives actually know what their peers receive, they want more."

Since I wrote that article, the spur to higher pay has been strengthened by that insistent provocateur, the Internet. Anyone who wishes to know if they are being paid competitively can check the compensation of top executives of any public corporation at "mysalary.com" (http://swz.salary.com/ExecComp/LayoutScripts/Excl_ExecReport.aspx). The availability of such information simply provokes higher demands.

THE ACTUAL CONSEQUENCES

I said earlier that this "small" matter of COI in medical journals had wider lessons to teach us. Indeed, it seems merely a reflection of the fact that conflicts of interest have become so commonplace in society that we often fail to recognize them when they occur. As pointed out by John C. Bogle, founder of The Vanguard Group, in his latest book *Enough*[3] one of the important contributing factors to the recent financial collapse was the unreliability of credit ratings. We countenanced a system in which supposedly incorruptible and objective credit rating agencies (e.g. Moody's, Standard and Poor's) were being paid enormous fees by issuers of securitized mortgages and other debt, and granting AAA ratings to assure the fees would continue to flow in. The result in many cases was that junk bonds could be marketed as high quality securities. Everyone involved smiled and took their money to the bank.

Now that the disclosures at the end of every medical article tell us something we never knew - that our peers are being compensated for telling manufacturers what is on their minds (something we were always happy to do gratis)—we too want a piece of the action. And we are no longer satisfied with free pizza for our office staff! Thus, the disclosures have had the paradoxically pernicious effect (the unintended consequence) of increasing the prevalence and the amounts of payments by manufacturers to physicians.

The irony is that such generous payments were never countenanced before the current era of full disclosure, because they would have been too embarrassing. Now, nothing seems to cause embarrassment if the price is right. The beneficiaries of the current largesse are now paradoxically able to "hide in plain sight." And the ultimate irony is that the well-intentioned medical journal editors became the enablers of this abuse when they decided to require disclosure of payments that might cause COI.

My own unhappy reaction is to assume that every researcher who is extolling a new drug or piece of surgical equipment too enthusiastically, particularly when the research has been supported by a grant from the manufacturer, must have a vested interest in its success. I view the data in such reports with a careful and cynical eye.

If you have an opinion on this controversial matter, we welcome your input.

IN THIS ISSUE

There are a number of unusual treats in this issue.

Dr. Scott Lauter uses the story form to illustrate how a financial incentive prompted a change in protocol and the availability of drugs. The story sends a message, but is that message a happy one? Should it give us pause? Would these changes have been initiated without a financial incentive? After all, for the entire history of medicine until recently, most advances in the practice of medicine were motivated simply by a desire to improve the care of our patients. Is it now true that we respond with alacrity only to financial incentives?

Of course not. It's just that financial incentives may prompt us to look into routines that we may have gotten complacent about. The incentive directs our attention. If so, that is a beneficial effect, as in this story, though it carries the risk that the entity which establishes the incentive can determine where our attention is directed. That's why it is essential that the metrics of compliance should be determined by physicians. Unfortunately, in far too many instances, we are subjected to metrics that are determined by government bureaucrats or by insurance companies.

Our major national organizations need to get out front and stay out front in establishing guidelines.

Unfortunately, even when they do so, the bureaucracies of government and insurance companies are hard to overcome. The National Database for Cardiac Surgery of the Society of Thoracic Surgeons has not been able to displace the flawed and inferior PHC4 system for reporting the results of cardiac surgery in Pennsylvania.

Dr. Lloyd Siegel, a practicing psychiatrist, has contributed a fascinating and distinctly erudite article on the cultural and psychiatric aspects of placebos, which—as he points out—depend on the uniquely human capacity for Hope. The positive effect of a placebo is the opposite side of the maleficent effect of a curse, which also can have negative somatic consequences for those inclined to fear it. Dr. Siegel also draws interesting connections between placebos and factitious illnesses. His article continues a discussion that began in our issue of last Fall,[4] and was continued in a Letter to the Editor in the next issue.[5] I will have more to say on this subject in our next issue, but space prevents me from doing so now.

Dr. Alan Peterson offers two clinically important articles: an update on recommendations for Adult Immunization, and a very timely review of the current state of Vitamin D supplementation. There has been some confusion on this subject because of recent recommendations from the Institute of Medicine that varied somewhat from a trend toward higher maintenance doses, and this update is welcome in reviewing the latest information.

The remainder of this issue includes an unusually comprehensive article on the complex subject of brain tumors by Dr. Charles Romberger and an exceptionally thorough discussion of advances in the prenatal diagnosis and subsequent management of congenital anomalies by our colleagues at Nemours, The Alfred I. DuPont Hospital for Children. The cost of the expanded prenatal capabilities is a matter for another discussion.

Finally, our medico-legal section returns with an exploration of EMTALA, the Emergency Medical Treatment and Active Labor Act.

REFERENCES

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