Homeopathic Medicine and the New York State Office of Professional Medical Conduct (OPMC)

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Abstract: The role of the Office of Professional Medical Conduct (OPMC) is reviewed in light of its history and several recent disciplinary actions taken against New York State physicians practicing Homeopathy and other Complementary and Alternative Medicine (CAM) modalities. The author's personal experiences with the OPMC are also reviewed and recommendations made.
Keywords: Office of Professional Medical Conduct (OPMC) in New York state, physician discipline and homeopathy, physician discipline and Complementary and Alternative Medicine (CAM)

The OPMC

The New York State Legislature created the Office of Professional Medical Conduct (OPMC) of the New York State Department of Health (NYSDOH) in 1976. Its mission is to protect the public from physician misconduct through investigation of issues and disciplining of physicians. Prior to the establishment of the OPMC, disciplinary oversight of physicians fell under the jurisdiction of the New York State Department of Education. After creation of the OPMC, the NYSDOH and the Department of Education shared the responsibility for investigation and discipline, until the responsibility became solely vested in the OPMC in 1991.

The OPMC board oversees disciplinary action against physicians, physician assistants and specialist assistants. Disciplinary issues for all other divisions of health care professionals (dentists, nurses, podiatrists, etc.) remains under the jurisdiction of the Department of Education. The Department of Education also continues to maintain authority over physician licensure in NY State.

The OPMC is authorized, pursuant to New York State Public Health Law Section 230, to investigate all allegations of professional misconduct by physicians and physician assistants, and is furthermore required to do so by law.(1) Anyone may file a complaint against a New York State physician by contacting the OPMC at the Department of Health. (2)

The official mission of the OPMC is to "protect the public from medical negligence, incompetence and illegal or unethical practice by physicians, physician assistants and specialist assistants." (3) The 2006 annual report of the OPMC indicated that it was comprised of 114 physicians representing 24 medical specialties and 54 lay members, including 5 physician assistants.(4) There are currently three physicians representing CAM practices on the board of the OPMC.

Every year the OPMC investigates approximately 7,000 complaints, resulting in roughly 400 actions of discipline against New York's 60,000 licensed physicians.

The OPMC has authority and jurisdiction to investigate and penalize physicians in New York State. Along with this comes the responsibility to work fairly with these practitioners. They are a diverse group whose philosophies and practice styles span a wide range of disciplines, from pediatrics to geriatrics, and from internal medicine to orthopedics and neurosurgery. Practitioners of Complementary and Alternative Medicine (CAM), including homeopaths, who have been judged by the OPMC in recent years, represent only a small proportion of all cases.

The OPMC's responsibility to deal fairly with and honor the differences in practice style of CAM practitioners is as great as their responsibility to protect the public. But it remains questionable whether the Board's membership has the professional background and understanding to effectively oversee this diverse group of practitioners with the kind of impartiality necessary to effectively fulfill their pub-

lic responsibility.

Physicians in NY State who practice CAM modalities, including homeopathy, need to be aware of the guidelines regulating the OPMC in order to protect their freedom to practice. They will benefit from a review of recent judgments made by the OPMC in cases of CAM practitioners presented in this paper because it will inform them of issues which have recently come to the forefront. Physicians outside of New York State may also benefit because these cases may be used as a persuasive precedent in other states.

The issues raised in this report question whether the medical practice of homeopathy is best served by the offices of the NYSDOH and the OPMC or whether other means of supervision need to be found. I will take the position that, ultimately, homeopathic medicine will need to be recognized as a distinct medical specialty in New York State and the United States and that its regulation requires the presence of homeopathic physicians on any investigative or supervisory board. Without these safeguards the practice of homeopathy is at risk of being marginalized as an integrative branch of allopathic medicine.

Medical Misconduct

According to the OPMC, medical misconduct includes (but is not limited to):

- practicing fraudulently,
- practicing with gross incompetence or gross negligence;
- practicing while impaired by alcohol, drugs, physical disability or mental disability;
- being convicted of a crime;
- filing a false report;
- guaranteeing that treatment will result in a cure;
- refusing to provide services because of race, creed, color or ethnicity;
- performing services not authorized by the patient;
- harassing, abusing or intimidating a patient;
- ordering excessive tests;
- abandoning or neglecting a patient in need of immediate care." (5)

Additionally, a physician has committed negligence under Education Law 6530 when he or she has "failed to exercise the care that a reasonably prudent physician would exercise under the circumstances." (6)

Review of judgments made by the OPMC reveals that medical misconduct also refers to practices that are outside the usual standard of care followed by fellow physicians. Prior to passage of the Alternative Medical Practice Act of July 26, 1994 (7), this meant that any physician practicing CAM in NY State would have been subject to discipline for medical misconduct, by definition.

Passage of the 1994 bill authorized physicians to utilize CAM modalities in their medical practices. It amended Education Law 6527 by adding paragraph (e) to subdivision (4) allowing physicians to utilize "whatever medical care, conventional or non-conventional, which effectively treats human disease, pain, injury, deformity or physical condition."

The bill was coupled with changes in Public Health Law Section 230 directing the OPMC to add new members to their ranks, "Two of whom shall be physicians who dedicate a significant portion of their practice to the use of non-conventional medical treatments."

The OPMC was also directed to utilize experts in non-conventional medical treatments, "If the investigation of cases referred to an investigation committee involves issues of clinical practice."

After the passage of these bills, New York state physicians who utilize CAM had good cause to believe that the DOH and the OPMC had acknowledged the right of CAM physicians to practice, or at least agreed to deal fairly with them. They believed that these measures were intended to provide a safety net for physicians who responsibly delivered CAM therapies. The case review presented below reveals that this might not be an accurate understanding in that the Board may not have been faithful to its statutory mandate.

The Review Process

In 2004, the majority (58%) of complaints filed with the OPMC arose from the general public, 15% were from the government, 12% from out-of-state sources, 9% from insurers and 6% from physicians and "others."

When a complaint is filed with the OPMC, a member of the OPMC investigative medical staff first reviews it. Complaints that raise possible misconduct issues are next assigned to a medical investigator. Those which do not are closed. In the first step of an investigation the physician is notified by telephone or letter and a request is made for copies of the medical record in question. The physician and complainant are subsequently interviewed, but separately. If the initial investigator finds that the material so discovered suggests probable misconduct, the matter is referred to an Investigative Committee consisting of two physicians and one lay person.

If the Investigation Committee reviews the referral and agrees that misconduct appears to have taken place, the matter is passed to a Hearing Committee, comprised of two physicians, a lay member, and an

administrative law judge. This committee calls the alleged offender to their presence for a hearing. A staff attorney presents the case for the state and a court stenographer records the proceedings. During the hearing the physician is allowed to defend the case sui generis and/or through legal counsel. Witnesses can be called.

The process can be lengthy. The average case is usually settled within seven months' time. More complicated cases have lasted years. The board follows guidelines of confidentiality and withholds the identity of the complainant. The internal workings of the board and committees are also confidential. Only the final decisions are admitted to public record.

In New York State the hearing committee has the authority to take the following disciplinary actions:

- Censure and Reprimand
- Probation
- Surrender of license
- Revocation of license
- Suspension of license
- Annulment of license
- Limit of practice
- Requirement of supervision
- Monitoring of practice
- Order of Retraining
- Fine up to $10,000 for each violation charged
- Requirement of Community Service up to 500 hours
- Dismissal of the case

In 2004 the majority of the OPMC's actions (32%) involved license suspension, 26% involved license surrender, 16% involved censure, reprimand or other; 12% involved censure, reprimand and probation, 11% involved license revocation, and only 3% of cases were dismissed. Penalties take effect immediately upon decision, unless otherwise specified.

The public has access to the OPMC database online to review disciplinary actions taken against any New York State physician. (8)

An appeals process exists for physicians who disagree with the OPMC's actions. This takes the form of the Administrative Review Board (ARB), a standing committee of three physicians and two lay members. A request for the ARB to review a case must be filed within 14 days of the Hearing Committee's decision. The ARB will review all proceedings of the case but does not allow the physician or legal counsel to appear before them on his or her own behalf.

If the ARB's review is not satisfactory, the physician has further recourse to an appeal of the decisions of either the Hearing Committee or the Administrative Review Board through the New York State civil court, Appellate Division, 3rd Department. This is called an Article 78 proceeding.

Review of CAM Cases

In 1992 the license to practice medicine of Warren F. Metzler, a physician claiming to be a homeopath, was revoked by a Hearing Committee of the OPMC. He was charged with practicing medicine with gross negligence and failing to maintain adequate records. The case involved his treatment of four patients.

Dr. Metzler appealed to the ARB and to the NY State Appellate Division, Third Department in 1994. He claimed that he was judged by an improper standard of care, that there was no homeopathic expert assigned to review his case, and that the board was prejudiced against homeopathy. Both the ARB and the Appellate Division upheld the decision of the OPMC hearing committee at all levels.

In its summary, the Appellate Division found that: "homeopathy is not recognized in New York State as a separate branch of medicine, nor is [a physician] separately licensed as a homeopathic physician." (9) The court failed to mention that homeopathy is recognized as a separate branch of medicine and is separately licensed in three other states. (10)

The committee judging this case concluded that the practitioner "did not meet the minimum standards of acceptable medical practice in New York State" since he did not practice according to the conventional allopathic standards of care.

When the physician claimed that, as a homeopath, he should not be held to the standards of care that exist for allopathic physicians, the Hearing Committee and the Review Board asserted that: "there are no different standards for licensed physicians based on their philosophy, religion or personal approach to their calling."

In other words, they failed to recognize homeopathy as a legitimate type of medical specialty practice. Their finding that all homeopathic physicians must adhere to the same treatment standards to which all other physicians in NY State are held means that they viewed homeopathy not as a medical specialty, but as a philosophy.

With respect to malpractice law, the written code states: "... each practitioner is judged according to the standards of practice of his or her field...CAM providers are each held to the standard of care in their own professions."

However, there are grey areas, as noted: "... a general standard of practice is applied to all those who present themselves to the public as being able to diagnose and treat illness...(and)...when a physician incorporates CAM therapies, it is unclear whether that physician will be held to a "mixed" standard of care that includes medical and CAM practice stan-

dards..." (11)

This is an area of medical law that desperately needs clarification and improved definition to eliminate ambiguity, in spite of the fact that CAM therapies have a relative "newcomer" status in the legal field.

In 1993 Nicholas J. Gonzalez, a physician practicing nutritional therapy, had his license suspended for three years by the OPMC, which then stayed the suspension subject to the physician's compliance with probationary conditions including: (1) supervision by the OPMC, (2) completion of a certified retraining program, (3) completion of 200 hours of community service in a hospice program, and (4) payment of a $15,000 fine.

The physician requested a review of the Investigative Committee's findings, claiming that the OPMC charges reflected a bias against CAM providers because his professional conduct was assessed according to conventional standards of care and that his patients had given consent to alternative treatment.

The physician in this case also claimed that misconduct did not occur because his patients had been fully informed about the risks and benefits of homeopathic treatment. But the court replied:"Such contention [was] wholly without merit because it is well settled that a patient's consent to or even insistence upon a certain treatment does not relieve a physician from the obligation of treating the patient with the usual standard of care."

This statement underlines a lack of tolerance for any medical approach other than the orthodox allopathic standard and denies the right of patients to choose their preferred medical treatment. In short, the OPMC and the Appellate Court in NY State both confirmed that all physicians, homeopathic or not, must conform to the same orthodox standard of care and provide that standard of care in treatment even if their patients specifically seek to avoid it and formally request such a deviation.

The ARB did overturn the revocation of his medical license, placed him on probation, overturned the fine, and modified the retraining requirement to include participation in a State-sponsored Physician Prescribed Education Program, but it sustained the requirement for community service. (12) They agreed that,"alternative medicine involves a different treatment regimen, but held him to the same standard of care to which all physicians in New York are held."

The physician appealed the decision of the Administrative Board in 1996 through the Appellate Court, but the Administrative Board's decision was upheld and the appeal was dismissed.

This ruling eliminates the ability of homeopathic physicians to legally engage in serious professional practice in New York State.

The Board's decision to devalue patient consent for purposes of a disciplinary proceeding stands in contrast to the importance of patient consent to CAM therapies in a civil malpractice action. With regard to the latter, the Second Circuit said in Schneider v. Revici:

> We see no reason why a patient should not be allowed to make an informed decision to go outside currently approved medical methods in search of an unconventional treatment. While a patient should be encouraged to exercise care for his own safety, we believe that an informed decision to avoid surgery and conventional chemotherapy is within the patient's right "to determine what shall be done with his own body," (13)

In a malpractice case, Charell v. Gonzalez, in 1997 the Supreme Court found that, "This indeed creates a problem for such physicians which perhaps can only be solved by having the patient execute a comprehensive consent containing appropriate information as to the risks involved." And, "An informed decision to avoid surgery and conventional chemotherapy is within the patient's right... [There is] no reason why a patient should not be allowed to make an informed decision to go outside currently approved medical methods in search for an unconventional treatment". (14)

The Supreme Court of New York also determined that, "The standard for proving negligence ... is whether the treatment deviates from the accepted medical standards ... [and] ... it would seem that no practitioner of alternative medicine could prevail on such a question as the reference to the term "non-conventional" may well necessitate a finding that the doctor who practices such medicine deviates from "accepted" medical standards." (15) The court's statement in this case is puzzling and shows that the judge equates CAM with malpractice and does not understand how CAM could conceivably be practiced without making the physician liable.

Overturning a history of antagonism towards CAM, the Federation of State Medical Boards tries to create a more balanced set of guidelines allowing physicians to practice CAM without fearing the loss of their licenses merely for including CAM:

> "These standards allow a wide degree of latitude in physician's exercise of their professional judgment and do not preclude the use of any methods that are reasonably likely to benefit patients without undue risk. Furthermore, patients have a right to seek any kind of care for their health problems. The Board also recognizes

that a full and frank discussion of the risks and benefits of all medical practices is in the patient's best interest." (16)

It is interesting that, in light of these decisions, in 1994 the New York State Legislature recognized the right of physicians to practice CAM when it amended Education Law 6527 by adding paragraph (e) to subdivision (4) to specifically provide that the law does not prevent a "physician's use of whatever medical care, conventional or non-conventional, which effectively treats human disease, pain, injury, deformity or physical condition."

The Alternative Medical Practice Act of July 26, 1994, also amended subdivision (1) of section 230 of the Public Health Law by requiring that at least 2 of the 18 physician members of the OPMC be "physicians who dedicate a significant portion of their practice to the use of non-conventional medical treatments who may be nominated by New York state medical associations dedicated to the advancement of such treatments." (17)

In 2001, Charles Gant, a physician practicing CAM, was disciplined by the OPMC resulting in license suspension for five years with the last four years and six months stayed with probation for four years and six months. The OPMC found the physician guilty of negligence on more than one occasion, practicing fraudulently, conduct which evidences moral unfitness and filing false reports. The physician appealed the decision to the Supreme Court, Appellate Division, but the court dismissed the physician's plea.

This physician, who maintained a practice in orthomolecular medicine, was charged with 74 counts of misconduct in a hearing that lasted 18 days and generated 4,000 pages of documents. Charges included: failure to obtain complete medical histories, failure to perform required physical examinations, failure to document diagnoses, prescribing medication without documenting adequate medical indications, ordering tests from a laboratory not certified in New York State, documenting diagnostic codes which did not accurately reflect the treatment actually provided, providing patients with erroneous diagnostic codes on their billing statements, and misrepresenting his credentials. (18)

The physician argued that his case was judged in violation of the 1994 amendments to Public Health Law 230 since there was no expert in non-conventional medicine on the Hearing Committee or the ARB panel which reviewed his case.

The Appellate Court review of the case quoted the following Public Health Law 230 (10) (a) (ii) citation: "If the investigation of cases referred to an investigation committee involves issues of clinical practice, medical experts shall be consulted. Experts may [emphasis added] be made available by the state medical societies and specialty societies, and by New York state medical associations dedicated to the advancement of non-conventional medical treatments." The court ruled that the language of this bill merely provides the OPMC with the option to utilize experts in non-conventional care, but does not require them to do so.

A recent judgment states, "The legislation does not guarantee petitioner, as a non-conventional physician, that a non-conventional physician will be on the Hearing Committee which determines his case." (19)

In another case the OPMC remarked: "We find that there is no requirement that members of the Committee or the Review Board be practitioners of the same specialty as the physician under review, much less that they be adherents to the same philosophy of medicine." (20)

In 2001, Serafina Corsello, a physician practicing CAM, was disciplined by the OPMC, resulting in license revocation. She was charged with sixty-nine counts of misconduct involving eight patients. Charges included "negligence, incompetence, practicing fraudulently, ordering excessive testing and/or treatment, filing false reports, improper delegation of professional responsibilities, failing to exercise appropriate supervision, aiding and abetting the unlicensed practice of medicine, abandoning a patient, engaging in conduct which evidences moral unfitness and failing to maintain accurate patient records." (21)

This physician did not practice homeopathy, but did utilize 'unorthodox' methodologies including nutrition and chelation therapy.

The Hearing Committee concluded that the physician had, in effect, admitted guilt when she failed to provide any written responses to their allegations. She did personally testify on her own behalf, but the committee felt that her testimony actually weakened her defense.

The physician argued that an alternative physician should have been on the Hearing Committee or at least should have been allowed to submit a report to the Hearing Committee on her behalf.

The OPMC responded that her request was moot, since: "there are certain basic principles and fundamentals in the practice of medicine. Each licensed New York State physician must meet certain minimum standards ... [and] must provide safe treatment in compliance with minimally accepted standards of medical practice. These minimum standards must be followed regardless of the licensed physician's specialty or calling ... Respondent's representation that she is a medical doctor, licensed and registered in New York State, obligates her to practice medicine

within the appropriate medical standards of care which apply to all physicians." (22) These are allopathic standards of care.

In 2003, Bozena Rozum-Slota, a physician practicing intravenous chelation therapy received censure and reprimand with the condition that prior to practicing outside her medical specialty (pathology) in the future she must undergo an evaluation of her clinical skills and be subject to three years of monitoring by the OPMC. (23)

This physician was charged with gross negligence, gross incompetence and failure to maintain records. In this case the court noted, "Injury, damages, proximate cause, and foreseeable risk of injury are not essential elements in a medical disciplinary proceeding, the purpose of which is solely to protect the welfare of patients dealing with state-licensed practitioners." (24)

She was charged with practicing outside her specialty area and was ordered to complete a "minimum of twenty (20) Category 1 CME hours in the area of complementary/alternative medical therapies per year."

In 2003, Michael J. Teplitsky, a physician practicing CAM, received license suspension for one year followed by four years probation. (25) He was charged with thirty-eight counts of professional misconduct including negligence, gross negligence, incompetence and gross incompetence on more than one occasion, ordering excessive tests or treatment not warranted by the condition of the patient, and failing to maintain adequate records.

The hearings in this case began in 2001, concluded in 2003, took place over twenty-four different dates and included testimony from seven different medical experts. (26) The "findings of fact" reduced the violations of care rendered to violations with eight different patients. The practitioner was faulted for failing to document relevant details from the medical history and review of systems, failing to perform an adequate physical exam, failure to record vital statistics from examination, failure to document medication names and dosages, failure to indicate which laboratory tests he ordered, failure to document the type of dietary changes that were discussed, prescription of medications without clinical justification, "off label" use of medications without documented justification, ordering laboratory tests without clinical justification, repeating laboratory tests that were unnecessary, failure to follow generally accepted standards of medical practice, failure to follow up with a consultant, and failure to record informed consent.

In reviewing the testimony provided by medical experts in the field as well as testimony by the practitioner, the Hearing Committee found some expert witnesses were not credible. They found the petitioner to be lacking formal training in CAM and in testimony to be "extremely evasive when answering questions. [He provided]... long, convoluted statements without actually answering the questions." His behavior was interpreted as "glib" and insulting to the intelligence of the Committee. In short, the Committee found that the physician's testimony was not credible.

The hearing committee concluded that this CAM practitioner failed to meet the minimal standards of care.

Personal Experience

In a letter dated August 31, 2005 the NYSDOH, OPMC, requested a copy of the medical record on one of my patients.

The letter, sent via certified mail, informed me that the OPMC was granted authority under section 230-10(1) of the New York State Public Health Law to obtain copies of the complete medical record and that HIPAA regulations 45 C.F.R. Part 164.512 "authorizes disclosure, without patient consent, to a public health authority that is authorized by law to conduct public health investigations." (27)

The letter did not state that I was under investigation, nor did it advise me to retain an attorney. The letter did state that "failure to comply with this request may be considered misconduct."

After calling the OPMC and speaking with their nurse investigator, I was informed that an investigation was under way regarding the care that I had rendered to one of my patients. I was not told the nature of the complaint, the charges against me, or the identity of the individual who had filed the complaint.

This case was well-known to me since I had reported it to the State Department of Child Protective Services nearly five months earlier, on suspicions of child abuse. I never learned who had filed the complaint against me, but I suspected that someone had not been happy with my actions. Even though I expressed this concern to the OPMC, it did not deter them from proceeding with their investigations.

On January 4, 2006, I was invited to speak directly with a physician investigator and a nurse administrator of the OPMC regarding the case. The focus of that discussion was the standard of care that I had provided. The OPMC made two things clear: (1) They were not concerned about my allegations of harassment being a possible cause of the complaint filed against me. (2) Neither of the investigators had any significant knowledge of or familiarity with homeopathy or CAM practices.

I emphatically expressed my concern over both of these issues and insisted that if the investigation

were to continue, that an expert in homeopathy must be assigned to review the case to make the investigation relevant. I voiced concern that determining the quality of care in this case was impossible unless it were judged by the standards under which it was conducted, namely homeopathy.

The next communication from the OPMC came more than six months later, on July 14, 2006. I received a letter informing me that the OPMC was now formally "investigating" my medical practice. (28) I was advised for the first time of my right to be represented by legal counsel at the next interview.

That interview took place on August 28, 2006. A different physician investigator and nurse administrator were now present, in addition to my legal counsel and myself. In response to my questioning this physician investigator claimed to have "some" knowledge of homeopathy.

In this meeting I was asked to review the case and provide a description of my practice. I addressed the scope of my practice as a homeopathic physician specialist, defined the nature of my work, and presented copies of charting forms and documents that I utilize in my office when assessing and treating patients. These included forms that I use for documenting medical history, review of systems, routine health maintenance, informed consent, physical exam, treatment plan and follow-up. I presented copies of a practice brochure and showed evidence of the patient education information that I routinely disseminate.

Although I felt defensive and guarded during this interview, the conversation was amicable and the physician investigator remained neutral.

As a follow-up to this interview, my attorney wrote a letter to the investigating physician and nurse administrator reiterating salient facts and formally requesting termination of the investigation and dismissal of the case.

On November 15, 2006, after more than fourteen months, two interviews, much review of my office procedure and personal 'soul searching', I was informed by the OPMC that, "Our investigation has been concluded and the case is closed without further action anticipated." (29) The case was closed.

The OPMC provided no explanation of findings and no apology for disruption of my practice or disturbance of my peace of mind. Their statement merely said "we are prohibited from providing you, your counsel, or anyone else with further information regarding our inquiry or the source of the allegations."

My experience was, fortunately, different from those cited above. I was able to prevail and convince the OPMC that my practice did meet their standard of care as an integrative medical practice with a special focus in homeopathy. I did conform to the orthodox medical standards by acting as a specialist in homeopathy, not as a primary care provider. My office notes and documents clearly indicated that I did inform my patients of these details and obtain their authorization and consent for treatment. At each step along the way my notes documented that conventional and alternative choices were discussed and appropriate referrals were made. Finally, my care in this case was punctuated by the report that I filed with the state department of Child Protective Services (CPS), based upon my suspicions of child abuse and neglect.

I believe that my case with the OPMC was the direct result of my report to CPS. Through this investigation, my naïveté was shattered and my eyes were opened to a larger reality of the practice of homeopathic medicine in New York State and across the country.

As a homeopathic physician, I found that my practice was open to close scrutiny and judgment by others who were not my peers and who had little or no knowledge about what I do. I realized that there are hazards involved in practicing homeopathic medicine with a board certification in Internal Medicine. Each of these disciplines has standards and sometimes they conflict. I determined that it is imperative to practice defensively, by documenting my thoughts and observations impeccably, due to the potential for any conflict to manifest in a forensic context, such as this one.

This ordeal disrupted my practice and incurred the costs of lost time and legal expense. It also lead to much anguish and worry about the possible adverse outcomes arising from a formal OPMC investigation and hearing.

I learned that even when everything goes well, when I have done the "right thing" and no one is harmed, as in this case, that I am still at risk from frivolous harassment, taking the form of damaging legal claims, which can be filed by anyone at any time with no apparent reason. Once a claim is filed in New York State, it must be investigated, no matter how small or irrelevant it may seem.

This experience did have positive aspects in that it allowed me to reaffirm and revitalize several areas of my office practice. It forced me to refocus on the dual task of patient care and documentation. It reinforced the need for an emphasis on absolute clarity and comprehensiveness in my office notes. I learned that an executed informed consent form and signed authorization for medical care are essential prior to exercise of my practice, in all cases. (30) In the end, I do feel that I learned and benefited a great deal from the experience.

Discussion

All the cases above demonstrate important facts about the disciplinary process affecting homeopathic and CAM physicians in NY State. To review:

I. The OPMC is required by law to investigate all complaints against physicians in New York State. Each complaint is purportedly investigated in an unprejudiced manner without regard to practice philosophy or belief. Complementary and Alternative Medicine physicians, including homeopaths, are be judged solely by allopathic standards of care and need to be fully aware of this. If there are conflicts between the care that was rendered by CAM practitioners and allopathic guidelines, then documentation must clearly state why these variances occurred and must reflect all aspects of informed patient consent and authorization for treatment.

Even though NY State recognizes a physician's right to practice unconventional therapies and a patient's right to request these therapies, it does not tolerate any practice that neglects the basic tenets of allopathic practice standards and considers deviations from this norm to be misconduct. The State demands that all medical practices within New York comply with the same standards of care regardless of discipline or approach.

This system of guidelines actually endeavors to be blind to the differences between CAM and conventional therapies. It seeks to assure that one standard of care exists between all practitioners of medicine no matter what their discipline or approach. The system does not attempt to determine which therapies are effective and which are not, but merely attempts to assure that there is a uniform code of behavior towards patients to which all practitioners subscribe.

> "The Review Board believes that the Hearing Committee judged [the doctor's] treatment of patients by the correct and only standard of care which applies to the profession of medicine in New York State, that being whether he had the skill and knowledge of the ordinary medical practitioner in New York State...There is no separate standard for physicians who practice homeopathic medicine." (31)

To practice within the State of New York, CAM physicians must adhere to the basic standards of care to which all physicians abide. If CAM standards deviate or oppose conventional standards, then a fully descriptive consent must be executed and documented in the patient's chart.

II. As mentioned above, the doctor/patient discussion regarding informed consent and the patient's understanding of and authorization for treatment with CAM modalities and what that means must be expertly documented in each medical record in order to assure that these basic practices are adhered to. Only this documentation can act as protection for both sides in the event of a complaint being filed. This discussion serves to describe for all parties how the instant treatment differs from the standard treatment. It is critical in any legal process.

> "The first step in the documentation process should be to include a written note in the patient's chart regarding the informed consent discussion... (and) ...The final stage of documenting that informed consent has been obtained should be the provision of the patient's signature on a consent form." (32)

Documentation must not stop after informed consent. Physicians practicing CAM must fully comply with established standards of documentation in all other regards in their medical record keeping. Failure to adequately document all critical elements of the patient interview, physical exam, analysis and plan, utilizing the S.O.A.P. format (or other accepted standard) represent inadequate care and may render a case indefensible.

The minimum acceptable standard for "good" medical record keeping includes the following at each visit: (33,34)

- Date of visit
- Appropriate identification data
- Treatment objectives and updates
- Medical history
- Reports of physical examinations
- Reports and results of procedures and tests
- Results of evaluations, consultations and referrals
- Clinical observations
- Discussion of risks and benefits with patient
- Evidence of appropriate informed consent
- Treatments recommended and executed
- Medications prescribed, patient use and reaction
- Instructions and agreements
- Periodic reviews, with dates and outcomes
- Diagnostic and therapeutic orders
- Conclusions and summary upon termination of care

III. The presence of CAM physicians on the OPMC plays no significant role in balancing the stance of the OPMC toward CAM practitioners undergoing disciplinary investigation. The OPMC does not guarantee a review by CAM peers, nor does it even subscribe to the theory that this would be ad-

vantageous. Although current law directs the OPMC to include CAM practitioners in its panel, it does not specifically require CAM practitioners to be placed on committees reviewing complaints against CAM physicians. Currently, the OPMC appears to follow the letter, but not the spirit of the law. They have established several members of the CAM community on the Board of the OPMC, but, since it is not a requirement, they do not guarantee that CAM members will be assigned to sit on any of the committees that review CAM cases.

CAM physicians can expect to be judged on conventional standards of care. This means that whenever treatment deviates from the accepted standard, documentation practices must justify this deviation.

From the perspective of any practitioner, CAM or otherwise, it would seem reasonable, if not essential, to be evaluated and judged by a group including at least one of one's own peers. It is difficult to imagine any other reason besides peer representation for an investigative board to include non-conventional physicians. Certainly one would not wish to waste the time and expertise of these individuals, who volunteer to serve in this capacity, on cases that do not relate to their clinical expertise in non-conventional medicine.

It is my firm belief that this law is in great need of further amendment to guarantee that each practitioner will be judged by at least one genuine peer. It is only under those circumstances that a CAM practitioner can be confident that any in-depth investigation that occurs will at least have a chance of being fair, and not biased against CAM practitioners, per se.

IV. Finally, the OPMC is invested with the authority to discipline physicians, regardless of their specialty orientation. Homeopaths and CAM physicians are not immune. Any failure to comply or cooperate, to provide documentation, or to appear before the board when requested, can and will be construed as misconduct in and of itself. This can readily result in disciplinary action, including fines and potentially the loss of one's license.

Conclusion

At present, the jurisdiction and final determination of all cases of physician discipline in New York State occurs within the cognitive confines of the conventional allopathic framework. The Department of Health and the OPMC are set up to regulate the practice and to investigate allegations of misconduct of homeopaths and other CAM physicians only within the guidelines of the conventional allopathic framework of medicine. The composition of the Professional Medical Conduct Board has been modified by the legislative changes of 1994 to include practitioners of CAM, but these representatives are not necessarily assigned to investigate CAM cases since the OPMC does not recognize homeopathy and other CAM therapies as distinct approaches to medicine.

The OPMC is concerned with basic medical standards which it believes all physicians must subscribe to. On this basis, the OPMC may be able to evaluate medical practices that integrate CAM, but it is not prepared to evaluate practices that are exclusively engaged in CAM.

As a result, exclusively homeopathic and CAM physicians in New York State are judged and disciplined, not by their peers, but by their conventional colleagues, who often do not understand CAM, may not be open to its contributions, and may even be hostile towards it.

The livelihood of homeopathic and CAM physicians in New York State (and the United States) is at least partially based upon how we are perceived by our non-homeopathic colleagues. It is imperative that we awaken to this fact and reflect on how we conduct our practices and how our conventional colleagues regulate us. The ramifications of this are far-reaching, and as a profession, we have the task of deciding if this form of regulation is acceptable or not.

If it is not acceptable, then as a profession, we must reach consensus jointly on what actions must be initiated to change this situation to ensure that exclusively homeopathic physicians will be judged according to the standards to which they subscribe.

There are currently two choices if this direction is taken:

(1) The current legislation governing the OPMC must be modified to specifically require that homeopathic and CAM physicians be present at all levels of evaluation and discipline in cases involving homeopathy and CAM. In addition, experts in each particular CAM specialty must be represented and called upon when those disciplines are involved in review.

Homeopaths should consider the active pursuit of recognition as a medical specialty by the American Board of Medical Specialties (ABMS). Once this recognition is achieved, this specialty board would assume responsibility for certification, licensing and disciplining of other homeopaths.

(2) Homeopathic physicians need to decide, as a profession, whether the art and science of homeopathy should be regulated within the allopathic medical framework or outside of it. Either way, it requires direct input and involvement by homeopaths, not just token membership in a medical conduct board in which they may never be called upon to review

cases of their peers.

Homeopathic physicians may choose to do nothing and to remain passive to the legislative processes within NY State (and the United States), but this inaction may well lead to further regulation of homeopathy as a subordinate integrative modality rather than as a bona fide medical specialty.

Until the homeopathic medical community either establishes an autonomous medical board responsible for standards of practice, credentialing, licensure and discipline or ensures that it gains an independent presence and voice in the existing medical board, then it stands to loose its identity as it is subjugated into an integrative role under conventional allopathic medicine, to its detriment.

Physicians who practice homeopathy in New York State and the rest of the United States need to awaken to the reality that their practices have a subordinate status before the law. Homeopaths must stop hiding 'under the radar' of the medical world. They must strive to stand out, thereby claiming the full recognition, status, power and patronage that homeopathy and its practitioners deserve. In this way we will be able to serve our patients more effectively and without inhibition.

To accomplish this, homeopathic physicians must work together to establish a clear set of guidelines and principles regulating the ethics and standards for the practice of homeopathy and codify these into the law. They must work politically to gain recognition and establish an equal standing with our allopathic medical colleagues, who now feel justified to consider the practice of homeopathy as only a minor branch of the mainstream approach.

The art and science of homeopathic medicine is more than a minor branch of allopathic medicine. Failure to act will leave homeopathic practices under the jurisdiction of conventional allopathic standards, subject to censure for being what we are, for failing to be what we are not.

It therefore behooves the homeopathic medical community in both New York State and the United States to work together, forming an alliance to petition for recognition of homeopathic medicine as a distinct medical specialty with the authority to establish its own training, credentialing, licensure and disciplinary boards, invested with the authority to set standards and maintain discipline over the practice of homeopathy as the distinct medical profession that it is and was meant to be.

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