

# From the President: Shifting Responsibility, Undermining Freedom

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Charles Murray, in his excellent book, *What it Means to be a Libertarian*, points out that responsibility is not the booby prize of freedom, as is widely believed, but the reward for freedom.

Responsibility actually gives meaning to life. If Murray is right, physicians' professional lives must be rewarding indeed. Most physicians, on the other hand, would likely say that their professional lives are progressively less rewarding.

If one accepts that Murray is right in his hypothesis, as I do, then there is something amiss. The problem is that physicians increasingly have their patients' responsibilities placed upon them. Apparently taking on the responsibilities of others doesn't add to one's rewards.

As a psychiatrist I'm particularly aware of this problem. Our medical and legal systems have for some time held psychiatrists accountable, not for providing good care, but for our patients' behavior. Conversely, our patients are relieved of responsibility for their behavior, which is to say responsibility for their lives.

For example, if a psychiatrist sees a patient who soon after commits suicide, that psychiatrist can reasonably expect a malpractice suit and perhaps removal of his license by the medical board.

It's a very difficult position for the psychiatrist. There is no laboratory test for suicide potential. One has to rely mainly on patient report, though there are numerous reasons why patients may not tell the truth. There might be a number of signs that would make a psychiatrist suspicious, but if the patient is reasonably intelligent and wants to hide suicidal intent, he certainly can.

Ultimately, there is no way to avoid risk other than to trample on patients' civil rights by having them locked away upon the least suspicion, and throwing away the key to the hospital door. Our current medical/legal system notwithstanding, the only thing that truly makes sense is for psychiatrists to offer care, and for patients to be responsible for their own actions and their own lives.

Psychiatrists are largely responsible for their own situation. Freud removed responsibility from patients for their own misbehavior. More recently, psychiatrists have, through the DSM diagnostic system, grandiosely turned just about every form of dysfunctional behavior into a disease replete with its own diagnostic code. They have also made dubious claims to a scientific diagnostic system with effective treatments, and trial lawyers have only been too willing to hold them to it.

I am sorry to say that I think the same detrimental legal philosophy under which psychiatrists are held responsible for patients' behavior is seeping into the rest of medicine. This seems particularly clear in pain management, a situation similar to that of psychiatry.

Pain, like psychiatric disorder, is something that can only be diagnosed by patient report or behavioral observation. This is to say that pain, like psychiatric disorder, is highly subjective. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) notwithstanding, pain is not the fifth vital sign. It is sometimes a reasonable, expected result of objective physical injury or disease, but the pain and its degree are not objectively verifiable.

Physicians treat patients' pain, and we are taught to try to provide effective relief. Physicians have been chastised severely of

late for not adequately treating pain. Physicians have even gone along with the JCAHO—remember that half the JCAHO board is AMA-appointed—in forcing hospitals to ask every patient about pain. This will increase the risk of doctors being sued for insufficient pain treatment.

There is no way to assess pain other than by patients' reports. We can never be certain of its presence or absence, although there may be suggestive clinical signs. And short of putting patients under 24-hour surveillance, there is no absolutely reliable way for a physician to know whether a patient is abusing pain medications.

It's reasonable to say that there are few physicians who have treated any significant number of patients with pain—in an ER, hospital ward, or private office—who have not heard a patient lie about the presence or degree of pain in order to obtain opiates. It is inescapable. It is also inescapable that some of the patients who fool their doctors into giving them opiates will also manage to hurt themselves while abusing those drugs.

One of the most shocking legal cases, among an appallingly large number of legal cases involving doctors, is that of Dr. William Graves, a Pensacola, Fla., physician and retired Naval flight surgeon. Four of his patients managed to kill themselves either by mixing drugs and alcohol, or by crushing and injecting the Oxycontin he had prescribed for them. Dr. Graves has been sentenced to 63 years in prison for manslaughter.

It is absurd, and immoral, to hold Dr. Graves responsible for his patients' behavior. He did not write a prescription that directed them to overdose on Oxycontin or to abuse other drugs. He had no way of knowing definitively whether these patients were in pain, or knowing whether they were going to abuse the drugs.

Even drug addicts sometimes really have pain, which we are told to treat. The prosecutor made a case that Dr. Graves was freely and sometimes knowingly prescribing opiates to drug addicts for profit. There is reason to believe that this is not true, but even if it were, I think the issue is irrelevant. He is not being punished for poor medical care, or even for breaking drug laws. He has been held culpable for the behavior of his patients, despite the fact that these patients were adults with free will, who disregarded medical instructions and undoubtedly knew they were taking risks.

Treading where other physician groups will not, AAPS has stepped in to help a physician caught in a troubling misuse of the legal system. Currently we are trying to help Dr. Graves with his appeal. Dr. Graves may be a well-meaning physician. He might, on the other hand, be the irresponsible physician that the prosecutor claims.

Either way, AAPS is involved primarily because of the precedent such a case sets. If Dr. Graves is held guilty of manslaughter for his patients' voluntary actions, then I believe that physicians everywhere will be held responsible for much of their patients' unwanted behavior.

This not only harms our medical system, but also brings us closer to a society in which no one is held responsible for his own actions.

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