ments against bribery. He then goes on to try to distinguish bribery from gift-giving, but in the end concludes that the wisest policy is to prohibit gift-giving. Perhaps the most important argument in Almeder's account is the argument to the effect that bribery "strikes at the heart of capitalism." Although we often take for granted that engineers practice engineering in the context of business (which means a capitalist system for American engineers), we too often forget that capitalism, itself, needs to be justified. The classic justification of capitalism is that it produces positive results. The system is based on the idea that in open competition, the best products (highest quality for least money) will survive, and this will benefit all concerned.

Bribery undermines open competition. It encourages those who make choices—about what products are purchased, what companies are allowed to sell their products in a country, what company receives a contract, and so forth—to choose not on the basis of the best product or service but rather on the basis of a personal benefit (a bribe) to the chooser. This is extraneous to the product or service. When such activities go on, we cannot be assured that the best products will survive.

The one form of bribery that has received the most public attention in recent years is that involving international business. Jack G. Kaikati's article "The Phenomenon of International Bribery" explains the problem and gives an overview of attempts that have been made to stop international bribery.

One of those attempts was passage of the Foreign Corrupt Practices Act (FCPA) in 1977. This act makes it a crime for American corporations to offer and provide payments to officials of foreign governments for the purpose of obtaining or retaining business. Mark Pastin and Michael Hooker take issue with this law. They examine international bribery from an ethical perspective, using what they call end-point ethics and rule assessment ethics, and they conclude that neither provides a clear basis for the FCPA.

After reading these selections, you will have a much better understanding of what bribery is and why it is considered wrong, but you may also be much more uncertain that all forms of bribery are morally equivalent because the readings point to the importance of the details in particular cases.

All the issues addressed in this chapter raise broad questions not so much about the behavior of individual engineers, but rather about the rules that are or should be operative in the system in which engineers practice. The rules should be such that engineering serves society. If they are, then engineers will have a reason for following them even if they go against the individual engineer's immediate self-interest. All engineers indirectly benefit from a system of engineering that serves humanity and commands the respect of the public.

A. Professional–Client Relationships

25 Obligations Between Professionals and Clients

Michael D. Bayles

THE PROFESSIONAL–CLIENT RELATIONSHIP

The central issue in the professional–client relationship is the allocation of responsibility and authority in decision making—who makes what decisions. The ethical models are in effect models of different distributions of authority and responsibility in decision making. One can view the professional–client relationship as one in which the client has the most authority and responsibility in decision making, the professional being an employee; as one in which the professional and client are equals, either dealing at arm's length or at a more personal level; or as one in which the professional, in different degrees, has the primary role. Each of these conceptions has been suggested by some authors as the appropriate ethical model of the relationship. Each has some commonsense support.

Although the argument in this section supports one model over the others, it is not the only one that is ever appropriate. The others might be so for certain specialized types of situations. Indeed, a relationship between a professional and a client might move back and forth between two or more models as the situation changes. It does not follow, as one author has objected, that one can generate any number of models or that they are merely matters of style.[1] They are based on the logically possible divisions of responsibility and authority between professional and client. The models set a framework for determining what obligations pertain and so are not mere matters of style.

Agency

According to this view, the client has most of the authority and responsibility for decisions; the professional is an expert acting at the direction of the client.[2] The client hires a professional to protect or act for some interest; the professional provides services to achieve the client's goal—purchase of a house, marriage counseling, design of a building. According to this conception, not only does the professional act for or in behalf of the client, but also acts under the direction of the client, as in bureaucratic employer–employee relationships. This conception is especially plausible for lawyers. In filing a complaint or arguing for a client, a lawyer acts for and in behalf of the client. According to some people, a lawyer is merely a "mouthpiece" or "hired gun." This is not a plausible view of accountants performing public audits, for they are supposed to provide an independent review and statement of the clients' financial conditions.

In some contexts, professionals are prone to adopt the agency view of the professional–client relationship. Professionals are sometimes "identified" with their clients and charged with the clients' alleged moral failings. Lawyers offer the defense that, in representing clients, they do not thereby ascribe to or support clients' goals or aims.[3] They are merely employees hired to perform a specific task. If the projects are bad or immoral, the fault lies with the clients, or perhaps with the legal system for permitting the projects.

The agency model most clearly exemplifies what has been called the "ideology of advocacy." This ideology has two principles of conduct: (1) that the lawyer is neutral or detached from the client's purposes and (2) that the lawyer is an aggressive partisan of the client working to advance the client's ends.[4] This ideology is readily applicable to physicians, architects, social workers, and engineers. A physician, for example, should not evaluate the moral worth of patients but only work to advance their health. The second element of the ideology does not apply to accountants performing audits, for they are to present independent statements of clients' financial conditions. It applies in other accounting activities though. For example, an accountant preparing a client's income tax statement should try to take every plausible deduction on behalf of the client.

Some aspects of this ideology appear inescapable in professional ethics. If professionals accepted only clients whose purposes they approved of and did not consider clients' interests any more than those of others, many persons with unusual purposes (such as wanting an architectural style of a building that is completely inconsistent with those nearby) might be unable to obtain professional services. And even if they did, the services might not be worth much because no special consideration would be paid to their interests.[5] The chief problem with the ideology of advocacy, where it does become an ideology, is that devotion to a client's interests is sometimes thought to justify any lawful action advancing the client's ends, no matter how detrimental the effect on others.

The agency view of the professional–client relationship is unduly narrow. Four considerations indicate limits to a professional's proper devotion to a client's interests, and consequently to a client's authority in decision making.

1. Professionals have obligations to third persons that limit the extent to which they may act in behalf of client interest.
2. The agency view arises most often in the context of defending professionals, especially lawyers, from attribution of client sins. This focus is too narrow to sustain a general account of the professional–client relationship. It best pertains to an adversarial context in which two opposing parties confront one another. In counseling, a lawyer's advice "need not be confined to purely legal considerations. . . . It is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible."[6]
3. Professionals emphasize their independence of judgment. Unlike soldiers, who are not expected to think for themselves but to do things the army's way, professionals should exercise their training and skills to make objective judgments. The agency view ignores this feature.
4. Except in cases of dire need—medical emergencies, persons charged with crimes —professionals may accept or reject specific clients. With a few restrictions, they may also cease the relationship. Consequently, the agency view is too strong. Professionals must also be ethically free and responsible persons. For their own freedom and the protection of others, they should not abdicate authority and responsibility in decision making.

Contract

If a client ought not to be viewed as having the most authority and responsibility, then perhaps the authority and responsibility should be shared equally. In law, a professional–client relationship is based on a contract, and the ethical concept of a just contract is of an agreement freely arrived at by bargaining between equals. If the relationship is a contractual one, then there are mutual obligations and rights, "a true sharing of ethical authority and responsibility."[7] Because it recognizes the freedom of two equals to determine the conditions of their relationship, the contract model accords well with the values of freedom and equality of opportunity.

However, no gain results from treating as equals people who are not relevantly equal in fact or from assuming a nonexistent freedom. The history of contracts of adhesion (the standard forms offered by monopolies or near monopolies such as airlines) indicates the injustice that can result from falsely assuming contracting parties have equal bargaining power. Many commentators have noted relevant inequalities between professionals and clients, especially in the medical context.[8] First, a professional's knowledge far exceeds that of a client. A professional has the special knowledge produced by long training, knowledge a client could not have without comparable training. Second, a client is concerned about some basic value—personal health, legal status, or financial status—whereas a professional is not as concerned about the subject matter of their relationship. The client usually has more at stake. Third, a professional often has a freedom to enter the relationship that a client lacks. A professional is often

able to obtain other clients more easily than a client can obtain another professional. Especially if a potential client has an acute illness, has been referred to a social agency, or has just been charged with a crime, he or she is not free to shop around for another professional. From this point of view, the bargaining situation is more like that between an individual and a public utility.

These considerations are not as important for the usual situation in architecture, accounting, and engineering. The clients of these professionals are often better informed about the subject matter of the transaction than are clients of lawyers and physicians. For example, businesses and corporations have accountants working for them who can give advice about auditors. Firms hiring consulting engineers have often had previous experience working with engineers in that field. Governments, even local ones, frequently have one or two engineers working for them who can advise and help. Moreover, they are freer than the professional to conclude an arrangement with another firm. Thus, in these situations, the factual basis for the contract model is most nearly present. However, the consulting engineer or architect has some special knowledge and ability the client lacks, or else a professional would probably not be hired, so the contract model's empirical assumptions do not quite hold even in these cases. . . .

Paternalism

Once one abandons models that assume the professional and client are equal and accepts that the professional is to some extent in a superior position to the client, one faces the problem of the proper extent of professional authority and responsibility in decision making. Parents have knowledge and experience that children lack, and it is often ethically appropriate for them to exercise their judgment on behalf of their children. Similarly, because a professional has knowledge and experience a client lacks and is hired to further the client's interests, perhaps the relationship should be viewed as one of paternalism.

Paternalism is a difficult concept to analyze. A person's conduct is paternalistic to the extent his or her reasons are to do something to or in behalf of another person for that person's well-being. What is done can be any of a number of things, from removing an appendix to preventing the person from taking drugs. One can also have a paternalistic reason for acting in behalf of a person—for example, filing a claim for food stamps or asserting a legal defense. The key element of paternalism derives from the agent, X, acting regardless of the person's, Y's, completely voluntary and informed consent. X's reason is that he or she judges the action to be for Y's well-being regardless of Y's consent to it. Y might be incapable of consent (a young child or psychiatric patient), Y might never have been asked, or Y might have refused to consent to the act.[9]. . .

A voluminous literature exists concerning the justification of paternalism.[10] The brief discussion here will outline only the major arguments. Paternalism requires justification because it involves doing something to or in behalf of another person regardless of that person's consent. It thus denies people the freedom to make choices affecting their lives. They lack self-determination. . . . The loss of control over their own lives, especially to professionals, is one reason for people's concern about professional ethics. Thus, paternalism is of central importance in professional ethics.

Three arguments are often offered to justify paternalism.

1. The agent has superior knowledge as to what is in a person's best interest. Because the agent knows better than the person what is best, the agent is justified in acting to avoid significant harm to, or to procure a significant benefit for, the person. This argument is perhaps the central one in favor of paternalism by professionals. As noted before, a professional possesses a relevant knowledge the client lacks, so he or she is better able to perceive the advantages and disadvantages of alternative actions. Consequently, the professional rather than the client should have primary authority and responsibility for decisions.
2. The client is incapable of giving a sufficiently voluntary and informed consent. By "voluntary" is meant without duress, psychological compulsion, or other significant emotional or psychological disturbance. By "informed" is meant with appreciation of the consequences of a course of conduct and its alternatives. If people cannot give such consent, then their decisions will not adequately reflect their reasonable desires and will not be expressions of their "true selves.". . .
3. A person will later come to agree that the decision was correct. Although the person does not now consent, he or she will later. For example, an unconscious accident victim with a broken limb will agree that a physician was correct to set the bone. Parents often require their children to do things, such as take music lessons, on the ground that later the children will be glad they did—"You'll thank me later!" An engineer might see a way to improve an agreed on rough design to better serve a client's needs, although it involves a significant alteration from the rough design. She might make the change in the belief that the client will agree when he sees the completed design.

To decide whether these justifications support viewing the professional–client relationship as paternalistic, it is useful to consider when reasonable people would allow others to make decisions for them. First, a person might not wish to bother making decisions because the differences involved are trivial. For example, an executive authorizes a secretary to order any needed office supplies because the differences between brands of paper clips and so forth are not important. Second, the decisions might require knowledge or expertise a person does not possess. For example, an automobile mechanic knows whether a car's oil filter needs changing. One goes to a mechanic for knowledge and service. Third, a person might allow others to make judgments if he or she is or will be mentally incompetent. Some people voluntarily enter mental hospitals. One would, however, want some assurance in this and the previous case that the persons making judgments for one have values similar to one's own. For example, a woman might not want a physician to make decisions in childbirth if the physician believed in saving the fetus' life over the woman's. Often, even usually, one can assume that the values are those of reasonable or average persons in society.

The first of these reasons does not directly relate to the arguments for paternalism, but the second and third do relate to the first two arguments for paternalism. Reasonable persons would allow others to make decisions for them when they lack the capacity to make reasonable judgments. However, most clients do not have sufficiently impaired judgment reasonably to allow others to make important decisions for them. This incapacity argument has little or no plausibility for the common clients of architects, engineers, and accountants. Business and corporate clients are unlikely to have significantly impaired judgment, even if they are biased. Moreover, even with individuals, the view is not plausible for the common cases. A person who wants to purchase a house or make a will, or who has the flu or an infection, is rarely so distraught as to be unable to make reasonable decisions. Consequently, the argument from incapacity does not support adopting a paternalistic conception of the professional–client relationship for most cases, although it supports using that conception in special cases.

The first argument for paternalism, that from superior knowledge, fits with reasonable persons allowing others to make decisions when they lack knowledge. Moreover, clients go to professionals for their superior knowledge and skills; such knowledge and skill is a defining feature of a profession. However, many decisions require balancing legal or health concerns against other client interests. As many authors have noted, crucial professional decisions involve value choices.[11] They are not simple choices of technical means to ends, and even choices of means have a value component. Professionals have not had training in value choices. Even if they had, they might not know a client's value scheme sufficiently to determine what is best for him or her when everything is considered. An attorney might advise a client that he or she need not agree to such large alimony or child support payments, but the client might decide that for personal relations with the former spouse or the welfare of the children, the larger payments are best. Similarly, a physician can advise bed rest, but because of business interests, a client can decide his or her overall interests are best promoted by continuing to work on certain matters. The client might especially need the income or be on the verge of completing a business deal that will earn a promotion. Social workers are often distraught to learn that "bag ladies" and other "derelicts" prefer their life to one with the benefits that a social worker can provide. Physicians sometimes fail to realize that a patient's other concerns, even a vacation trip with the family, can precede health. They write and speak of the problem of patient noncompliance just as parents speak of noncompliance by children. Yet one does not have everything when one has health. Similarly, a client might want an engineering or architectural design to use one type of construction rather than another because its subsidiary supplies such materials.

Although a professional and client are not equals, sufficient client competence exists to undermine the paternalistic model as appropriate for their usual relationship. Clients can exercise judgment over many aspects of professional services. If they lack information to make decisions, professionals can provide it. Sometimes professionals argue that clients can never have the information they have. This is true, but not directly to the point. Much of the information professionals have is irrelevant to decisions that significantly affect client values. The precise name of a disease and its

manner of action are not relevant to deciding between two alternative drug therapies, but the fact that one drug reduces alertness is. Similarly, clients of engineers do not need to know the full weight a structure will bear, only that it is more than sufficient for all anticipated stress. To deny clients authority and responsibility by adopting the paternalistic model is to deny them the freedom to direct their own lives. Clients are not capable of determining the precise nature of their problem, or of knowing the alternative courses of action and predicting their consequences or carrying them out on their own. They need and want the technical expertise of a professional to do so. However, they are capable of making reasonable choices among options on the basis of their total values. They need professionals' information to make wise choices to accomplish their purposes.

Finally, when the professional–client relationship is conducted on the paternalistic model, client outcomes are not as good as when the client has a more active role. Douglas E. Rosenthal studied settlement awards in personal injury cases.[12] The actual awards received were compared to an expert panel's judgments of the worth of the claims. The less the client participated in the case by not expressing wants, seeking information from the lawyers, and so on, the more the awards fell short of the panel's estimates of the worth of claims. Other studies have found that in medical care, disclosure of information (and consequent more informed participation of clients) also beneficially affects outcomes.[13] Not only does the paternalistic model sacrifice client freedom and autonomy, but as a result, client values and interests are also often sacrificed.

Fiduciary

As a general characterization of what the professional–client relationship should be, one needs a concept in which the professional's superior knowledge is recognized, but the client retains a significant authority and responsibility in decision making. The law uses such a conception to characterize most professional–client relationships, namely, that of a fiduciary. In a fiduciary relationship, both parties are responsible and their judgments given consideration. Because one party is in a more advantageous position, he or she has special obligations to the other. The weaker party depends on the stronger in ways in which the other does not and so must *trust* the stronger party.

In the fiduciary model, a client has more authority and responsibility in decision making than in the paternalistic model. A client's consent and judgment are required, and he or she participates in the decision-making process. But clients depend on the professional for much of the information upon which they give or withhold their consent. The term *consents* (the client consents) rather than *decides* (the client decides) indicates that it is the professional's role to propose courses of action. It is not the conception of two people contributing equally to the formulation of plans, whether or not dealing at arm's length. Rather, the professional supplies the ideas and information, and the client agrees or not. For the process to work, the client must trust the professional to analyze accurately the problem, canvass the feasible alternatives, know as well as one can their likely consequences, fully convey this information to the

client, perhaps make a recommendation, and work honestly and loyally for the client to effectuate the chosen alternative. In short, the client must rely on the professional to use his or her knowledge and ability in the client's interests. Because the client cannot check most of the work of the professional or the information supplied, the professional has special obligations to the client to ensure that the trust and reliance are justified.

This is not to suggest that the professional simply presents an overall recommendation for a client's acceptance or rejection. Rather, a client's interests can be affected by various aspects of a professional's work, so the client should be consulted at various times. The extent of appropriate client participation and decision making can be determined by advertence to the reasons for allowing others to make decisions for one. Professionals do not have expertise in a client's values or in making value choices significantly affecting a client's life plans or style. However, they do have knowledge of technical matters. A patient will certainly let a physician determine the dosage of medicines. A client can reasonably allow an engineer to determine the general specifications of materials for a job. A lawyer may decide whether to stipulate facts or object to testimony.[14] Clients allow professionals to make these judgments because the effects on their values are small, and they do not wish to be bothered. In short, client consent and involvement are not necessary when (1) the value effect is not significant or (2) the matter is a technical one, and the professional's values do not differ significantly from the client's.

The literature on medical ethics is replete with discussions of informed consent, and it has been taken up as important for other professions such as engineering and law.[15] The legal doctrine of informed consent developed from medical malpractice and experimentation. Informed consent is legally necessary before one can perform procedures on a patient. However, informed consent has a strong ethical basis in protecting a client's self-determination. The elements of informed consent are (1) a capacity to understand and choose; (2) an explanation of a proposed course of action, its alternatives, and the risks and potential benefits of each option; and (3) free and voluntary consent.

Informed consent is not itself a model of the professional–client relationship. Instead, it is a method or technique to guard against paternalism and promote shared decision making. Doubt exists about the extent to which it has actually promoted these goals in medicine. The process can become a ritual of securing a patient's signature on a form. One might think that informed consent implies a contractual model of the professional–client relationship. However, as previously suggested, it better fits the fiduciary model. The client consents, agrees to, or accepts the professional's recommendation and explanation of it. The client does not participate in formulating a plan of action or developing alternatives and determining the risks and benefits of each. Nonetheless, the client's self-determination is retained because the client's consent is necessary.

The appropriate ethical conception of the professional–client relationship is one that allows clients as much freedom to determine how their life is affected as is reasonably warranted on the basis of their ability to make decisions. In most dealings of business and corporate clients with accountants, architects, engineers, and lawyers, the relationship is close to a contract between equals or even agency. As clients have less knowledge about the subject matter for which the professional is engaged, the special obligations of the professional in the fiduciary model become more significant. The professional must assume more responsibiilty for formulating plans, presenting their advantages and disadvantages, and making recommendations. Because of the increased reliance on the professional, he or she must take special care to be worthy of client trust. Thus, although the fiduciary model is appropriate throughout the range of competent clients and services, the less a client's knowledge and capacity to understand, the greater the professional's responsibilities to the client. . . .

OBLIGATIONS OF TRUSTWORTHINESS

The fiduciary ethical model of the professional–client relationship emphasizes a professional's special obligations to be worthy of client trust. Only if a professional deserves a client's initial and continuing trust has the ideal of the fiduciary conception been achieved. As should be clear from the rejection of paternalism, the sense of trust involved is not that of trusting a professional to make decisions for one.[16] One may always pertinently ask, "Trust to do what?" The answer is trust to fulfill the functions that the average client wants and for which a professional is hired. A client wants a professional to use expertise to analyze the problem, formulate alternative plans or courses of action, determine their probable consequences, make recommendations, or carry out certain activities (audit, surgery) in his or her behalf. A professional's obligations to a client are those necessary to deserve the client's trust that these activities will be performed in a manner to promote the client's interests—including the freedom to make decisions regarding his or her life. . . .

The fiduciary model's implication that professionals must be worthy of client trust provides a criterion for determining professionals' obligations to clients. Seven virtues and responsibilities of professionals to clients are honesty, candor, competence, diligence, loyalty, fairness, and discretion. By definition, a professional must be honest to be worthy of trust. Professionals can be dishonest toward clients by suggesting and providing services that are not useful, as well as by outright theft. Candor is probably a subclass of honesty and includes full disclosure to clients as well as truthfulness. Although lying to clients can probably never be justified, because it effectively destroys a trust relationship, information may be justifiably withheld from clients if necessary to prevent direct harm to them and if they are told as soon as possible.

Competence is not itself an ethical virtue, but the responsibility to keep current with one's field and not to undertake tasks for which one lacks competence is an ethical one. Moreover, to inform clients of alternative approaches, professionals have an obligation to be aware of developments in other professions pertaining to problems they handle. Diligence is the requirement that a professional work carefully and promptly. Self-employed professionals cannot properly argue that they lack time to consider each client's case adequately unless a shortage of professionals means some people would be denied services to which they have a right. Employed professionals such as teachers, nurses, and social workers often have no direct control over the number of clients they have. If they have more than they can ideally handle, they must provide services based on the priority of the value to the different clients.

Because professionals are hired by clients to protect and promote their interests,

they must be loyal to their clients. A professional's loyalty can be affected by conflicts of interest between the client and the professional, other clients in that transaction or in other cases, or third party payers. Client consent to a professional acting in his or her behalf after disclosure of an actual or possible conflict of interest is a necessary but not sufficient condition to justify a professional accepting a case. The professional must also be able to exercise independent judgment in behalf of the client. Accountants performing audits, lawyers making independent evaluations, and journalists owe independence of judgment to the public.

Fairness, primarily an obligation to provide impartial service to clients, rests on the value of equality of opportunity. Bias can affect the quality of services professionals provide clients. Professionals should not favor one client over another. This obligation is especially important for teachers in grading.

Discretion rests on the clients' value of privacy in not having information about them conveyed to others without their consent. Even discussion of a client's public activities can be indiscreet. Confidential information about a client may be disclosed for the client's sake if (1) the client has been informed that the professional will do so when he or she judges it to be in the client's best interest and the client has not explicitly refused permission or (2) disclosure is necessary to prevent significant harm to the client. It may also be disclosed by a professional in order to collect a fee or in self-defense against a charge of wrongdoing. Confidential information may be disclosed to protect others from injury when required by law. For journalists, confidentiality pertains to sources of information, not to the audience that is plausibly the clients. Consequently, it does not rest on the privacy of clients, but on the privacy of sources and the interests of clients in information.

Finally, clients have three obligations to professionals. The first is to keep commitments they make to them, including to pay them. Clients also have an obligation to be truthful to professionals, but arguably not to full disclosure. Lastly, they may not request professionals to perform unethical acts. These obligations are all specifications of universal norms, not role-related ones, because in a fiduciary relationship, the special obligations are those of the advantaged party—the professional.

NOTES

1. See K. Danner Clouser, "Veatch, May, and Models: A Critical Review and a New View," in *The Clinical Encounter*, ed. Shelp, pp. 94–96.

2. See Veatch, "Models for Ethical Medicine," p. 5. Veatch calls this the engineering model of the physician, but this assumes it is appropriate for engineers.

3. ABA, *Model Rules*, Rule 1.2(b).

4. Simon, "The Ideology of Advocacy," p. 36.

5. Simon's proposed alternative to the ideology of advocacy suffers these defects to some extent. He does not allow for professional roles. Thus, all professional obligations are at best specifications of universal norms. "The foundation principle of non-professional advocacy is that problems of advocacy be treated as a matter of *personal* ethics. . . . Personal ethics apply to people merely by virtue of the fact that they are human individuals. The obligations involved may depend on particular circumstances or personalities, but they do not follow from social role or station." Ibid., p. 131.

6. ABA, *Code of Professional Responsibility*, EC 7-8; see also ABA, *Model Rules*, Rule 2.1 and comment.

7. Veatch, "Models for Ethical Medicine," p. 7; see also Veatch, *Theory of Medical Ethics*, esp. pp. 134–137.

8. See, for example, Masters, "Is Contract an Adequate Basis," p. 25; May, "Code, Covenant, Contract, or Philanthropy," p. 35; Engelhardt, "Rights and Responsibilities," pp. 16–17; Richard Wasserstrom, "Lawyers as Professionals: Some Moral Issues," in *1977 National Conference on Teaching Professional Responsibility*, ed. Goldberg, pp. 120–122.

9. Some authors contend that paternalism does not apply to persons incapable of consent because they define paternalism as limiting a person's autonomy, which incompetent persons lack; see, for example, Beauchamp and McCullough, *Medical Ethics*, p. 84. Such a definition makes it difficult for parents to be paternalistic and undercuts the grounds for some laws, such as compulsory commitment because persons are a danger to themselves.

10. See especially Feinberg, *Harm to Self*; Kleinig, *Paternalism*; and Van DeVeer, *Paternalistic Intervention*.

11. See, for example, Glenn C. Graber, "On Paternalism and Health Care," in *Contemporary Issues in Biomedical Ethics*, ed. Davis, Hoffmaster, and Shorten, p. 239; Buchanan, "Medical Paternalism," p. 381; and Goldman, *Moral Foundations*, pp. 179–186.

12. Rosenthal, *Lawyer and Client*, chap. 2.

13. President's Commission, *Making Health Care Decisions*, pp. 100–101.

14. See ABA, *Code of Professional Responsibility*, EC 7-7; but see ABA, *Model Rules*, Rules 1.2(a) and 1.4.

15. See Martin and Schinzinger, *Ethics in Engineering*, pp. 59–64. Strauss, "Toward a Revised Model of Attorney–Client Relationship"; and Spiegel, "Lawyers and Professional Autonomy."

16. Cooper, "Trust," distinguishes (1) entrusting someone with something, (2) deeming someone to be trustworthy as honest and so on, and (3) having confidence in abilities and so on. The sense involved in the test is being worthy of trust in senses (2) and (3).

REFERENCES

AMERICAN BAR ASSOCIATION. 1983. *Code of Professional Responsibility and Code of Judicial Conduct*. Chicago: American Bar Association.

———. 1983. *Model Rules of Professional Conduct*. Chicago: American Bar Association.

BEAUCHAMP, TOM L., AND LAURENCE B. MCCULLOUGH. 1984. *Medical Ethics*. Englewood Cliffs, N.J.: Prentice Hall.

BUCHANAN, ALLEN. "Medical Paternalism." *Philosophy and Public Affairs* 7: 370–90.

COOPER, DAVID E. 1985. "Trust." *Journal of Medical Ethics* 11: 92–93.

DAVIS, JOHN W., BARRY HOFFMASTER, AND SARAH SHORTEN, eds. 1978. *Contemporary Issues in Biomedical Ethics*. Clifton, N.J.: Humana Press.

FEINBERG, JOEL. 1986. *Harm to Self*. Vol. 3 of *The Moral Limits of the Criminal Law*. New York: Oxford University Press.

GOLDBERG, STUART C., ed. 1977. *1977 National Conference on Teaching Professional Responsibility: Pre-Conference Materials*. Detroit: University of Detroit School of Law.

GOLDMAN, ALAN, H. 1980. *The Moral Foundations of Professional Ethics*. Totowa, N.J.: Rowman and Littlefield.

KLEINIG, JOHN. 1984. *Paternalism*. Totowa, N.J.: Rowman and Allanheld.

MARTIN, MIKE W., AND ROLAND SCHINZINGER. 1983. *Ethics in Engineering*. New York: McGraw-Hill.

PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIO-

MEDICAL AND BEHAVIORAL RESEARCH. 1982. *Making Health Care Decisions*, vol. 1, *Report*. Washington, D.C.: U.S. Government Printing Office.
ROSENTHAL, DOUGLAS E. 1974. *Lawyer and Client: Who's in Charge?* New York: Russell Sage Foundation.
SHELP, EARL E., ed. 1983. *The Clinical Encounter: The Moral Fabric of the Patient–Physician Relationship*. Boston: D. Reidel.
SIMON, WILLIAM H. 1978. "The Ideology of Advocacy: Procedural Justice and Professional Ethics." *Wisconsin Law Review*: 29–144.
SPIEGEL, MARK. 1987. "Lawyers and Professional Autonomy: Reflections on Corporate Lawyering and the Doctrine of Informed Consent." *Western New England Law Review* 9: 139–52.
STRAUSS, MARCY. 1987. "Toward a Revised Model of Attorney–Client Relationship: The Argument for Autonomy." *North Carolina Law Review* 65: 315–50.
VANDEVEER, DONALD. 1986. *Paternalistic Intervention: The Moral Bounds on Benevolence*. Princeton, N.J.: Princeton University Press.
VEATCH, ROBERT M. 1972. "Models for Ethical Medicine in a Revolutionary Age." *Hastings Center Report* 2 (June): 5–7.

26 Conflict of Interest

Michael Davis

Five years ago, Joseph Margolis began an important paper on conflict of interest with the observation:

> The notion of a conflict of interest is singularly ignored in most attempts to examine the nature of moral and legal constraints. In attempting to supply an analysis, therefore, we will be breaking relatively fresh ground.[1]

Had Margolis made that observation only yesterday, it would have been just as true. There is, of course, now much more being written about whether this or that is a conflict of interest. The practical literature of business and professional ethics is much richer than it was even five years ago. But Margolis was talking about "the *notion* of a conflict of interest," not about this or that particular conflict. He set out to supply an "analysis" missing from the literature. If Margolis was breaking relatively fresh ground five years ago, the ground remains relatively fresh. Margolis analyzed conflict of interest as an avoidable exploiting of conflicting roles. No one has (as far as I can tell) publicly disagreed with him.

But was Margolis breaking fresh ground? If one examines the literature of what is generally known as "business and professional ethics," it certainly seems he was. If, however, one examines instead the special literature of legal ethics, Margolis's fresh ground looks about as fresh as an Illinois corn field after harvest. Legal ethics long ago worked out an analysis of conflict of interest as a situation tending to undermine independent professional judgment. The analysis can, I think, easily be generalized to cover situations other than those lawyers face. So generalized, the analysis is both

From *Business and Professional Ethics Journal*, vol. 1, no. 4 (1982), pp. 17–27.