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**MEDICINE, MONEY, AND MORALS: PHYSICIANS' CONFLICTS OF INTEREST.** By Marc A. Rodwin. New York: Oxford University Press. 1993. 411 Pp. \$25.00.

*Reviewed by John L. Carter\**

Inside the Beltway, the three C's have eclipsed both the foreign and domestic agenda in anticipation of the 1994 elections. The three C's of course are the assorted health plans promoted by President Bill Clinton, Congressman Jim Cooper, and Senator John Chafee. Outside the Beltway, there is an urgent demand for reform of the present health care system. The upcoming elections and a chorus of special interest voices weighing in have created high anxiety on Capitol Hill. In the debate over mandatory alliances, single-payer plans, and universal coverage, the only universal characteristic is confusion. While the technocrats tinker with the parameters of the new health care system, Marc A. Rodwin's *Medicine, Money, and Morals: Physicians' Conflicts of Interest* provides a compelling argument that the way some physicians do business needs greater scrutiny.

Professor Rodwin identifies several troubling practices:

1. Paying and receiving kickbacks for referrals.
2. Income earned by doctors for referring patients to medical facilities in which they invest (physician self-referral).
3. Income earned by doctors for dispensing drugs, selling medical products, and performing ancillary medical services.
4. Payments made by hospitals to doctors to purchase physicians' medical practices.
5. Payments made by hospitals to doctors to recruit and bond physicians.
6. Gifts given to doctors by medical suppliers.<sup>1</sup>

Professor Rodwin provides several examples where physicians have been exposed for engaging in financially self-serving practices. *Medicine, Money, and Morals*, however, is a polemic and must be read with a strong caveat in mind. Professor Rodwin provides little empirical data of a sys-

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1. MARC A. RODWIN, *MEDICINE, MONEY, AND MORALS: PHYSICIANS' CONFLICTS OF INTEREST* 56 (1993).

temic nature of his charges against the medical community. The author admits that the sources he employs "do not yield numbers on distribution and frequency that would satisfy the appetite of scholars trained in sophisticated statistical techniques and sampling. But the lack of good data sets is a common problem."<sup>2</sup> The issue of the frequency of these practices is a nagging unanswered question for the reader. With this qualifier aside, Professor Rodwin does document authoritatively, with copious endnotes, cases of these practices occurring.

Some physicians' financial arrangements promote self-dealing. Physicians often invest in medical laboratories which perform the diagnostic test doctors order for their patients. The author reports that in 1987 twenty-five percent or more of the independent clinical laboratories were partially or wholly owned by physicians.<sup>3</sup> This creates a financial incentive for doctors to order unnecessary tests. Professor Rodwin also recounts the prosecution, under Medicare fraud laws, of Russel Furth, a hospital administrator who had agreed to pay two doctors seventy dollars for each patient they admitted to the hospital.<sup>4</sup> At the present, physicians can be prosecuted for accepting kickbacks involving Medicare patients as well as under state law.<sup>5</sup> Tougher federal Medicare fraud laws provide prosecutors with ammunition in combating this unseemly, if not always illegal, practice of physicians receiving money for admitting patients to a particular hospital. In his book, Professor Rodwin cites mostly legal cases involving Medicare fraud which is a probable result of stricter regulation. However, he also indicates that government intervention in providing and controlling medical care is not a cure-all remedy for abuses which occur within the system.

While the preceding chapters provide a historical backdrop and a warning on the hidden dangers of reform, the final chapter cuts to the heart of the matter. Chapter eight addresses: "What Needs to Be Done." Professor Rodwin first dismisses two possible options: disclosure and complete public intervention.

As Professor Rodwin correctly notes, disclosure by physicians to the average person can never be complete by the fact of the physician's medical knowledge alone.<sup>6</sup> Lawyers similarly operate in superior position in

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2. *Id.* at 265.

3. *Id.* at 71.

4. *Id.* at 58-59.

5. *Id.* at 297.

6. *Id.* at 216.

When information is too voluminous or complex for the average consumer to

their relationship with their clients. Professor Rodwin writes that public disclosure in the medical community would not achieve the level found in government-regulated employees and the legal field.<sup>7</sup> This is a less persuasive argument. Bill and Hillary Clinton have reached the highest level in government in winning the White House. Still, they are surrounded in daily newspaper accounts of possible conflict of interests in the Whitewater affair. While the President and the First Lady have not been accused of violating any specific law, legal scholars have called the conduct of the Rose law firm, where Hillary Clinton was partner, "a classic conflict of interest."<sup>8</sup> Whitewater demonstrates a conflict of interest in both the legal community and the government simultaneously. Professor Rodwin notes that the media and public watchdog groups serve as deterrents against possible conflicts of interest in the government.<sup>9</sup> These groups, however, are not infallible. Only after the election of President Clinton have the details of the complex Little Rock connections revealed more than a simple bad investment by the Clintons. If Professor Rodwin has faith that the media and public interest groups can get the job done in the governmental arena, can they not play a role in monitoring physician and their financial interest in medical facilities through public disclosure?

Although Professor Rodwin favors a larger role for government in the regulation of physicians, he cautions those who would support complete government control through direct employment of physicians. Professor Rodwin writes: "When seeking to limit expenditures, government agencies may offer doctors financial incentives to limit services, just as HMOs do today with risk-sharing plans. They may also pursue other policies using means that compromise physicians' loyalty to patients."<sup>10</sup> The

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interpret, outside groups - such as consumer associations or professional assessors - can evaluate the data. But studies show that purchasers are less likely to search for alternative products and services when time is critical or when they are ill-equipped to distinguish between crucial, deferrable, and unnecessary services.

*Id.* at 216. When a patient is uncomfortable or in pain, the option to shop for a second opinion often is subjugated in hope of immediate relief.

7. *Id.* at 218-19.

8. See Alan Dershowitz, *Ethics, Conflict of Interest at Root of Whitewater Investigation*, BUFFALO NEWS, Jan. 28, 1994, at 3; see also David Klaidman, *For Better or Worse; White-collar Bar Questions the Wisdom of Hiring Joint Counsel for Hillary and Bill Clinton in the Whitewater Probe*, CONN. L. TRIB., Feb. 14, 1994, at 8.

9. RODWIN, *supra* note 1, at 214.

10. *Id.* at 220. Professor Rodwin goes on to say that "the government is likely to develop stricter conflict-of-interest policies than the private sector," and cites a Veterans Administration regulation. *Id.* This example proves both of the author's points. The regulation of possible conflicts-of-interest is greater in the public sector but, as in the case of the VA, the quality of care is reduced despite governmental participation. VA hospitals

mere fact that the government is involved does not insure against conflicts of interest arising. All the afflictions which plague the vast defense procurement process will, and have already, infect any bureaucracy created to administrate a federal health care system.<sup>11</sup>

A model solution offered by Professor Rodwin is the Securities and Exchange Commission (SEC). A Medical Regulatory Commission (MRC) would be created to "licens[e] medical personnel, providers, and suppliers, and [to set] policy with respect to medical care financial practices and conflicts of interest."<sup>12</sup> The envisioned MRC would permit medical care to remain in the private sector, "[j]ust as the securities industry belongs in the private sector but is subject to SEC control," while regulating physicians' financial interest in the medical care industry.<sup>13</sup> The medical community's reaction to this proposal probably would be skepticism.

Once Congress obtains federal oversight to the finances of the medical community, further regulation and price controls are a distinct reality. Congressmen, such as Fortney "Pete" Stark, the chairman of the Ways and Means subcommittee on health, would wield great regulatory power over the medical care community. Professor Rodwin cites Representative Stark on several occasions<sup>14</sup> and acknowledges the assistance of Congressman Stark's staff in the preparation of the book.<sup>15</sup> The Congressman also provides a blurb for the dust jacket of the book. Representative Stark is an ideologue who has argued for the nationalization of sections of the medical care community.<sup>16</sup> Government intervention in the medical care industry does not insure against possible conflicts of interest. On December 28, 1993, the Washington Post reported on a study

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have a notorious reputation for the poor quality of care they provide. Bill McAllister, *Competition Prescribed for the VA: Clinton Plan Calls for Overhaul of Hospitals*, WASH. POST, Sept. 18, 1993, at A1. *8 Deaths Now Tied to Lapses at Veterans Hospital*, N.Y. TIMES, Apr. 23, 1991, at A14.

11. RODWIN, *supra* note 1, at 221.

12. *Id.* at 240

13. *Id.*

14. *Id.* at xiv, 44, 126-28, 239-40, 266.

15. *Id.* at 393.

16. Congressman Stark, who represents the bay area of California, promotes aggressively his own vision of health care for America. In 1990, Representative Stark called Dr. Louis Sullivan, then Secretary of Health and Human Service and an African-American, "a disgrace to his race" when Secretary Sullivan opposed federally sponsored national health insurance. *Lawmaker Says His Racial Insult of Health Secretary Was Mistake*, N.Y. TIMES, Aug. 4, 1990, at A8. Congressman Stark apologized to Dr. Sullivan under pressure from congressional leaders. *Stark Gives Sullivan a Formal Apology*, WASH. POST, Aug. 8, 1990, at A6.

released which evinced that Congressman Stark was the leading recipient on the Ways and Means Committee of money from political action committees (PACs), which represent many of the health care and industry groups.<sup>17</sup> While the acceptance of PAC money is not illegal, it presents similar conflicts of interest Professor Rodwin decries in the medical care industry. Government regulations prohibit direct compensation and gifts,<sup>18</sup> but congressmen receive compensation indirectly from vested interests in the form of PAC money which pays for their re-election campaigns.

A better solution than the unpalatable elixir of governmental oversight, lies in Professor Rodwin's suggestion that fiduciary laws, which now regulate other professions, be extended to physicians.<sup>19</sup> The doctor to patient relationship would take on an additional fiduciary duty imposed on the physician. Physicians would be required to refrain from financial self-dealing in their relationships with patients. Reasonable steps would include a ban on doctors investing in diagnostic labs which they utilize. There should be an immediate end to the practice of directly paying physicians for the admission of patients to a specific hospital.<sup>20</sup> Physicians should avoid also the appearance of a conflict of interest by refusing any compensation or gifts from pharmaceutical companies.<sup>21</sup> These fiduciary laws could be enforced by state medical licensing boards, and the courts, when physicians breach the duty owed to their patients. In the practice of law, this method of enforcement has been successful in maintaining the fiduciary duty owed to a client, notwithstanding the Whitewater affair. Enforcement in this manner would avert the need for a medical regulatory bureaucracy.

Professor Rodwin's prose is clear and concise. The book is accessible to one who has neither a medical nor legal background. Professor Rodwin avoids both the tedious professorial tone and the stiff and obtuse style that accompanies most legal writings. The book is documented with the notes appearing at the end. Utilizing endnotes avoids footnotes from

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17. The study was conducted by Citizens Action, which supports a single-payer plan. The study reported Representative Stark received a total of \$328,171 in PAC money from health and insurance groups between Jan. 1, 1991 and Oct. 30, 1993. Charles R. Babcock, *Health Interests and Lawmakers*, WASH. POST, Dec. 28, 1993, at A13.

18. RODWIN, *supra* note 1, at 187.

19. See generally *id.* at 190-211.

20. *Id.* at 57-60.

21. Physicians should decline any gifts, other than ones of *de minimis* value. Professor Rodwin points to the restrictions on Congressional employees from accepting any gifts over \$250. *Id.* at 187.

consuming every page and leaves with the reader the decision to investigate a particular point if interested. The author also provides a helpful list of acronyms to prevent the reader from becoming an MIA in a sea of AMAs, ABAs and HMOs. In *Medicine, Money, and Morals*, Professor Rodwin champions a stronger governmental role in regulating the financial interest physicians have in medical facilities which physicians employ in the treatment of their patients. While the reader can disagree with the prescription the author offers to remedy the problem, one cannot ignore the legitimate concern and potentiality for conflicts of interest which spurs Professor Rodwin to call for the rehabilitation of the present system.