MEDICINE AND HOLISTIC PRACTICE

by Jerry A. Green, J.D.

To avoid creating legal problems
and protect your independent professional identity.

- Reduces disciplinary risks.
- Reduces risks of civil liability.
- Defines professional responsibility.
- Reduces risks of unlicensed medical practice.
- Improves clinical efficacy.

My 20+ years of healthcare practice management experience, developed after defending practitioners against unlicensed medical practice charges, is designed to help you identify a conceptual framework for discussing your holistic practice in scientific terms without adopting medical concepts.

You can make simple verbal agreements, documented by written records, that clarify a non-medical objective. These agreements also hold the potential to secure the cooperation of your clients so that their efforts, intentions and expectations support your work and improve your clinical efficacy.

Jerry A. Green, JD
Practice Management Consultant
Specializing in Collaborative Planning

Over the years, I have written many model forms for clients to use in their practices. Their review is part of my consulting relationships, and clients have permission to use and draw from them. Here's a sample intake language from an application for services:

Clients often ask about medical conditions. You are more vulnerable to developing pathological conditions (i.e., illness, injury, disease) when energy imbalances persist for extended periods. However, an energy imbalance does not suggest the existence of a medical condition. Also, balancing vital energy, which can be initiated without medical diagnosis or treatment, facilitates healing from illness and recovery from injury. Holistic services assist you to learn more about the dynamics of health that are within your control and enable you to assume more responsibility for managing them. They focus on intention and attention, energetic balance, self awareness, and patterns of stress and accumulating tension, as distinct from the treatment of a pathological condition.

1. Does the diagnosis or treatment of a particular injury, disease, or other pathological condition concern you? Explain.
2. Are you currently receiving medical care?
3. Describe any concern about your health in terms of patterns of behavior or imbalances you experience on physical, emotional, mental, or energetic levels.
4. Explain your objectives in seeking health services here in non-medical terms. What would you like to accomplish regarding patterns of behavior relating to balance, vital energy, self-awareness, or the accumulation of tension?

Selected Bibliography

Contracts With Your Doctor? New Realities 1978 V.2, N.1
A discussion of the scientific assumptions which distinguish holistic practice from medicine, and a brief introduction of the principles of contract applied to role clarification in health care.

The Health Care Contract: A Model for Sharing Responsibility, Somatics 3:4, 1982
Written for holistic practitioners, this article summarizes ten scientific assumptions distinguishing medicine and holistic practice, providing a perspective on the evolution of legal authority and the basic elements of contract as applied to sharing responsibility in clinical relationships.

Minimizing Malpractice Risks by Role Clarification: The Confusing Transition from Tort to Contract, Annals of Int Med 109/3: 234-241, 8/1/88
Written for physicians, this piece discusses the difficulties with informed consent identified by a President's Commission in 1982 and their suggestion that shared decisionmaking be employed by the profession. It postulates the scope of practice and the allocation of responsibility for decisions as common misunderstandings capable of clarification and identifies the four basic decisionmaking models.

Medicine and the Scope of Practice Boundaries The Townsend Letter For Doctors, Feb. '95
A discussion of the scientific assumptions which distinguish holistic practice from medicine, and an introduction of the principles of contract applied to role clarification in health care.

Integrating Conventional Medicine and Alternative Therapies, Alternative Therapies, July '96
Written for physicians employing or referring to holistic practitioners, this article examines how risks of professional censure and civil liability may be reduced by structuring clinical practices by agreements which clarify scope of medical and non-medical roles and identifying referrals for ancillary services as distinct from incorporating alternative therapies in treatment plans.

Collaborative physician-patient planning and professional liability; opening the legal door to unconventional medicine. Advances in Mind Body Medicine, Volume 15, No.2, Spring, '99
A symposium of professionals explore role clarification and collaborative planning as applied to clarifying the scope of practice boundaries between conventional medicine and holistic therapies.

INTEGRATING CONVENTIONAL MEDICINE AND ALTERNATIVE THERAPIES

Jerry A Green, JD

Jerry A Green is an attorney specializing in medical malpractice and healthcare in Mill Valley, Calif. He has contributed to professional conferences and is the author of numerous articles.

All integrations require a respect for differences and an openness to discovering common boundaries and complementary needs and abilities. We see unity in yin and yang, and in the relationship between husband and wife. Integrating body, mind, and spirit depends on the recognition that feelings are not the same as thoughts, and that a realm beyond both exists. The one mind functions through right brain and left brain so that our perception of similarities and our recognition of differences enable our mysterious comprehension of the whole.

Should the integration of conventional medicine with alternative therapies be any different? Merging the two into one scope of practice raises serious questions about acceptable standards of practice, professional ethics, and civil liability. Licensing laws defining medical practice in terms of diagnosing and treating pathological conditions prohibit inclusion of unlicensed practitioners in treatment plans without risking civil and criminal liability and involving physicians in the questioned conduct.

On closer inspection, however, the boundaries defined by scope of practice statutes also suggest meaningful distinctions for practitioners whose therapeutic modalities also seem to require a conceptual framework distinct from the medical model of pathology. Integration and coordination can take place without offending accepted standards of care and prevailing licensing laws.

It should be noted that, whereas unlicensed practitioners of alternative or complementary therapies are not, according to state licensing and scope of practice laws, allowed to diagnose or treat pathological conditions, licensed practitioners of alternative or complementary therapies may diagnose or treat certain pathological conditions enumerated by their state licensing boards. Scope of practice definitions vary mostly in the manner in which they define this general premise. The scope of practice of physicians typically is written as unlimited license to treat, whereas some professionals (eg, podiatrists, chiropractors, physical therapists, Chinese medical doctors) may have limited license to treat certain pathological conditions. Limitations on their scope of practice may be defined anatomically, or in terms of the nature of pathology, or condition (such as referral) may be placed on a particular practice.

By addressing physicians' concerns regarding potential liability over entering into a referral arrangement with a practitioner of alternative or complementary therapies, or concerns regarding practicing such therapies, it is hoped that this barrier to integrating alternative therapies into a conventional medical practice will be removed.

The scope of practice distinctions drawn in this article offer a conceptual framework for integrating traditional medical practices with alternative therapies—without offending medical licensing laws and accepted standards of practice. They support the independent professional recognition of alternative therapies and suggest parameters for professional association to further academic purposes. These distinctions also apply to methodologies for researching alternative therapies in a manner that respects the scientific assumptions appropriate to their appreciation.

PROFESSIONAL CENSURE, CIVIL AND CRIMINAL LIABILITY

Conventional practice in medicine does not contemplate the use of holistic modalities. Because of this, such practices commonly are viewed as contrary to accepted standards of practice. Those employing unrecognized methods of treatment may trigger professional peer review activity leading to disciplinary action by regulatory agencies and resulting in probation, suspension, or revocation of one's license to practice. Practicing outside the boundaries of accepted standards of care also leaves doctors vulnerable to civil liability in a malpractice case.

When alternative therapies are offered by an unlicensed practitioner, a related licensed provider is vulnerable to disciplinary action and civil liability. A determination of civil liability requires a

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finding of negligence or substandard care when the questioned behavior is not illegal. If, however, an allegation of practicing medicine without a license is sustained, the illegal conduct obviates the need to prove negligence. This is called "negligence per se"; the physician can be criminally prosecuted for aiding and abetting the unlicensed practice of medicine.

Questions of professional liability and peer review involving the integration of conventional medical practice with alternative therapies will be judged according to these premises of prevailing standards only in the absence of express agreements that define roles and allocate responsibility in a manner different from the presumptions of accepted standards of practice. Physicians select the models that govern professional liability and peer review issues by deciding whether they are willing to make explicit agreements about responsibility. Collaborative planning changes the *context* for understanding professional liability.

Because alternative therapies often differ from the treatment for pathology, they may be seen as distinct from medical practice, thereby enabling one to defend allegations of substandard practice by asserting that independent standards should be used to evaluate competence in this arena of practice. Compare California Business and Professions Code Section 2052, which defines the scope of medical practice, with Section 2068, which exempts nutritional consulting therefrom (see Table).

TABLE Excerpts from the California Business and Professions Code

Sec 2052. "Unlawful Practice of Medicine" Defined

Any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of doing so a valid, unrevoked, or unsuspended certificate as provided in this chapter, or without being authorized to perform such act pursuant to a certificate obtained in accordance with some other provision of law, is guilty of a misdemeanor.

Sec 2068. Exemption: Nutritional Advice–Notice Required

This chapter shall not be construed to prohibit any person from providing nutritional advice or giving advice concerning proper nutrition. However, this section confers no authority to practice medicine or surgery or to undertake the prevention, treatment, or cure of disease, pain, injury, deformity, or physical or mental conditions or to state that any product might cure any disease, disorder, or condition in violation of any provision of law.

For purposes of this section the terms "providing nutritional advice or giving advice concerning proper nutrition" means the giving of information as to the use and role of food and food ingredients, including dietary supplements.

Any person in commercial practice providing nutritional advice or giving advice concerning proper nutrition shall post in an easily visible and prominent place the following statement in his or her place of business:

"NOTICE"

"State law allows any person to provide nutritional advice or give advice concerning proper nutrition-which is the giving of advice as to the role of food and food ingredient, including dietary supplements. This state law does NOT confer authority to practice medicine or to undertake the diagnosis, prevention, treatment, or cure of any disease, pain, deformity, injury, or physical or mental condition and specifically does not authorize any person other than one who is a licensed health practitioner to state that any product might cure any disease, disorder, or condition."

The notice required by this section shall not be smaller than 8½ inches by 11 inches and shall be legibly printed with lettering no smaller than ½ inch in length, except the lettering of the word "NOTICE" shall not be smaller than 1 inch in length.

The principle of exempting modalities that are not treatments for pathological conditions also would apply elsewhere in the absence of such statutory clarification. (Although California statutes are cited here, scope of practice statutes in other states use similar language.) When analyzing or comparing scope of practice statutes, one should pay close attention to clauses that define purposes (diagnosis or treatment), objectives (disease or injury), and specific skills or treatment modalities.

If alternative services are understood according to methodologies that may be distinct from the diagnosis and treatment of pathology, physicians can defend themselves against the charge of substandard practice by arguing that acceptable standards of practice should be applied only to recognized professional responsibilities. Role clarification agreements with patients can limit the boundaries of professional responsibility assumed by doctors to those functions comprehended by their scope of practice. Clinical agreements also can define alternative therapies offered by unlicensed practitioners in nonpathological terms, thereby establishing a defense against the charge of unlicensed practice.

Civil liability for malpractice requires the patient to prove that damages resulted from negligent care or substandard practice. Because this element need not be proven when unlicensed practice can be established, a structured practice that defines alternative therapies outside the scope of licensed professional responsibility offers protection against civil liability. In all of the above situations, alternative therapies can be perceived as *ancillary* or *adjunctive* to (but not *a part of*) licensed medical roles in the diagnosis and treatment of pathology. For example, referrals written on prescription slips imply inclusion in a treatment plan, and therefore are not advised when addressed to nonmedical practitioners. Practitioners should consider using referral forms that identify the complementary natures of the treatment plan and alternative methodology.

A clinical practice structured in this

manner will support the independent professional recognition of holistic practices and lay the foundation for understanding the appropriate allocation of responsibility between the two professional roles, thus promoting a meaningful exchange of clinical information and appropriate referrals. These distinctions also clarify for patients the expectations appropriate to different health practitioners and facilitate meaningful decision making.

THE HEALTHCARE CONTRACT

The management of a client seeking alternative treatment in a medical practice requires special attention. Identification and clarification of the needs, wishes, and responsibilities of the client are of fundamental significance. One must establish specific purposes in order to ensure the proper management of objectives. Indeed, the motivation of this client is distinct from that of a client seeking care in a traditional allopathic medical practice.

In its historic evaluation of the Medical Practices Act, the California Board of Medical Quality Assurance concluded its inquiry with the following comment from its chairman: "The central issue concerning the scope of professional responsibility was the need for doctors (and indeed all health practitioners) to establish with patients a process for clarifying their individual and mutual responsibilities in clinical relationships" (Winters B. Board of Medical Quality Assurance Committee Memorandum 2052; May 20, 1983).

Individual agreements are the fundamental tools for structuring clinical relationships and for allocating responsibility in healthcare. Express agreements take priority over common law doctrines such as negligence and standards of care (tort law), laying the foundation for resolving disputes in contract law (see note). Assuming the purpose is legal and the terms are not coerced, there are three basic elements to a healthcare agreement: (1) *purpose*, (2) *complementary responsibilities*, and (3) *term* or time frame. Healthcare contracts need not be written, and may be evidenced by notes, clinical records, correspondence, or journals. The best evidence of an agreement is considered to be the recollection of the parties, so documentation intended to refresh recollection will always be more meaningful than a form written to apply to many different situations. When making agreements regarding healthcare, practitioners should contemplate changing the elements as circumstances change or as values and preferences concerning the allocation of responsibility mature over time.

The initial element, *purpose*, can be illustrated by comparing purposes in conventional medical practice with those that

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- monitoring a recognized pathological condition during a period of behavioral change or nonmedical therapy
- receiving diagnosis and treatment

The concern also might be insufficient to warrant medical attention at the time. An agreement to communicate any increase in concern would then be warranted, as well as the practitioner's acknowledgment that the client's choice is reasonable. The second part of the plan identifies other agreed upon approaches for addressing dynamics of health that are within the patient's control. Referrals should clarify that the alternative therapy is ancillary or adjunctive to medical care, not a part of the medical treatment regimen.

CONCLUSION

Whether a healthcare program uses both alternative and traditional medical care by a solo practitioner, or by two or more practitioners working together or by referral, the principles of distinguishing and clarifying the choice of care given is fundamental to the appropriate integration of these separate fields of healthcare within a single delivery system.

For a complementary introduction to the consulting format, "Medicine and Holistic Practice" send an SASE to Jerry A Green.

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Note

For a discussion of role clarification principles in medicine, see the following: Green JA. Minimizing malpractice risks by role clarification: the confusing transition from tort to contract. *Ann Intern Med.* 1988;109:234; Epstein R. Medical malpractice: the case for contract. *Am Bar Found Res J.* 1976;1:87; Epstein R. Contracting out of the medical malpractice crisis. *Perspect Biol Med.* Winter 1977:228.

might be anticipated in the application of alternative therapies. If the purposes are separately distinguished, the roles offering those services may be played by either licensed medical personnel or unlicensed practitioners without offending the distinctions. The purposes in conventional medical relationships involve diagnosing and treating pathological conditions. Patients commonly assume that medical purposes include the provision or restoration of health. This misunderstanding generates unrealistic expectations that can lead to adversity, poor outcomes, noncompliance, and disputes. Purposes in medical practice can be understood in a more limited context such as monitoring a recognized condition while the patient explores a nonmedical healing modality or experiments with lifestyle changes. Another narrowly defined medical purpose is providing only diagnosis and advice regarding prognosis and/or treatment alternatives. (See the discussion of clinical practice below.)

As the conceptualization of alternative therapies continues to mature, the definition of purpose in these relationships may involve identifying one of a variety of methodologies. Each of the following may be seen as separate from the disease model. One might encompass the pursuit of balance, integration, or homeostatic resilience. The development of self awareness may be another focus of many mind-body disciplines and include identifying goals in terms of changes in attitudes, lifestyle, or behavior patterns. Energetic or spiritual objectives may be seen as a third paradigm in which specific purposes could be identified. Fitness training and self development would suggest additional models for the process of identifying specific purposes in nonmedical relationships.

Complementary responsibilities involve defining what each party to the relationship must do in order for the relationship to function properly. Specific professional responsibilities depend on the nature of the services offered, and should be defined with care to making the distinctions offered above when providing services outside the traditional scope of medical practice. These distinctions can be clarified and supported by supplying information about the nature and extent of special education and experience working with alternative therapeutic modalities. Patients' responsibilities, upon which specific treatment or therapeutic outcomes might depend, also should be defined. They would include the manner in which medications will be taken, any nutritional or lifestyle changes, exercise regimens, and attitudinal modifications.

Collaborative planning may be facilitated by making express agreements about the allocation of responsibility for making decisions. For example, parties can agree that one party holds primary responsibility for certain decisions whereas the other provides advice, counsel, or information about personal values and preferences; or parties may agree to make decisions jointly.

The importance of a *term* or time frame for a clinical relationship too often is overlooked, leaving professionals allegedly responsible for treatment plans that are abandoned by patients in favor of some other course of action—or no action at all. Deciding on an expressed term also prepares both parties for the need to update, modify, or otherwise end a working relationship. Practitioners should avoid thinking about healthcare agreements as static contracts; rather, they should be understood as *plans*, and their evolution should be contemplated as a *planning process*. Agreements are either fulfilled, broken, or changed. Planning for change ensures against abandoned or broken agreements.

CLINICAL PRACTICE

The initial interview should inform the prospective client of the breadth of services available, and determine the various needs of the client. Medical history, dental history, health and symptom history, and patient self-assessment are among the written instruments that may be used.

The responsibility of the physician is to establish the presence or absence of pathology. A nonmedical practitioner may identify any *concerns* the client has regarding pathology and refer them to appropriate medical care. Where no pathology exists, or where concomitant care is established by an appropriate referral or the client and nonmedical practitioner feel that no further care regarding pathology is warranted, the client may elect to proceed with alternative therapies in the hands of qualified unlicensed practitioners.

The scope of professional services offered might initially be addressed in an intake interview. The intake interview could determine the client's need for medical services including any diagnosis or treatment of pathological conditions. It could assess any concerns about medical conditions, then determine what healthcare interests could be approached from a nonmedical perspective. It also might be preceded by an "Application for Services," which educates and prepares the client to think about the distinctions between the disease model and alternative conceptual frameworks. These distinctions may be explained in text, but I recommend that questions be formulated to ask separately for expressions of clients' concerns both in medical terms (eg, diseases or injuries) and nonmedical terms (eg, constitutional issues, imbalances, patterns of behavior, emotional or energetic concerns). By asking questions, the physician (or practitioner) effectively creates documentation with clinical value that elicits the patient's own thoughts (which later can be clarified if necessary).

The purpose of the intake interview is to arrive at a plan that deals with concerns about pathology separately from any desired plan to balance, integrate homeostatic dynamics, develop self-awareness, or undergo an energetic or spiritual change. For example, a constitutional evaluation (as in homeopathy) may assess the type of individual by the client's unique patterns of behavior on physical, emotional, and mental levels. A two-part plan should be created. The first part of the plan pertains to the client's *concern about* pathology. The concern might warrant the following:

- receiving advice regarding diagnosis, prognosis, and treatment alternatives

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(from The New Holistic Health Handbook-1985
as revised from Somatics, V.3 N.4 1982)

The Health Care Contract: A Model for Sharing Responsibility

Jerry A. Green, J.D.

This article summarizes the scientific assumptions of medicine and holistic practice as a basis for clarifying the professional responsibilities of health practitioners. The basic elements of contracting are then applied to the dynamics of clinical relationships, creating a mutually defined plan as framework for allocating responsibility among doctors, patients, holistic practitioners and clients. The legal aspects of health contracts are discussed and it is suggested how contract principles may be tools for sharing responsibility.

- *How does one define one's roles and responsibilities in health care?*
- *What can health professionals and individuals do to share responsibility for making their relationship work?*
- *How can health care relationships be created which satisfy both practitioners' and clients' interests and needs?*
- *How does one sort out the many different services being offered by health practitioners?*

MY RESEARCH of medical malpractice cases began in 1972 with the curiosity to explore a suspicion that the holistic perspective may have something to do with the solution to our crisis in medicine. I learned that many malpractice cases were generated by unfulfilled expectations about the role of the doctor. I postulate that by clarifying the responsibilities of both the doctor and the patient, a framework can be developed in which each party can discover the dynamics of a successful working relationship. This is the process of contracting.

The problems generated by not making clear agreements in medicine start when practitioners assume more professional responsibility than what medical science is designed to deal with. It is unnecessary for doctors and hospitals to assume more responsibility than diagnosing and treating pathology. Their failure to define their roles in a manner limited to their scientific purpose makes the identification of patient responsibility difficult. Health professionals should assist individuals to go beyond the banner of "self-responsibility" as a simple admonition by helping them construct a plan for their action.

Contracting in health care relationships should not be approached as a legal issue. The process of developing contracts is primarily an educational tool. The terms and conditions of a contract create a framework within which practitioners and clients work together. Contracting enables us to define individual goals, purposes, preferences and expectations, and choices as well as explicitly allocate responsibility for decision making to the appropriate person.

Nobody Can Give Us Freedom of Choice

Many people involved in today's health renaissance seem to be clamoring over the issue of freedom of choice in health care. They feel that the prime strategy for creating a more responsive health care system is through legislative modifications amending current civil and criminal codes that govern the practice of medicine. Their premise is that the medical professions and the law deny the individual's freedom of choice. They fail to realize, however, that our freedom of choice is one of those inalienable rights that courts have difficulty recognizing precisely because the source of this freedom is fundamental to our social nature. Freedom of choice in the marketplace is one of these inalienable rights. The law does not prohibit people from choosing any health practice. It only defines what certain services can be provided by licensed practitioners.

However, the legislative process can encourage freer choice among health care systems by requiring full and fair disclosure by medical and health practitioners and requiring ethical standards for all kinds of practitioners. More importantly, the legislature can encourage and support broad health education programs.

The only risk to our freedom of choice in health care is our failure to exercise that right. It is through the exercise of our fundamental rights that we recognize their nature and protect them from abuse. Making an agreement is the way we recognize our rights regarding any matter and assume the obligations necessary to enjoy them. This is

how responsibility as a concept is transformed into action. Agreements are thought-out opportunities for taking responsibility.

A Process, Not a Product

The first task is to clarify needs for pathological services and distinguish them from desire for health promotion and holistic health service. Many problems are generated by classifying holistic perspectives as diagnosis or treatment of pathology. Physicians risk professional censure and civil liability for violating standards or practice when holistic services are thought of as alternative treatments.

Consider whether holistic practices are really alternative treatments. Clarifying their nature will enable individuals to make more meaningful contracts utilizing them. History provides a good place to start exploring the assumptions in which our health care relationships are rooted.

Holistic Practices are Schools of Thought, Not Just Alternative Treatments

What is commonly understood as "alternative treatments," "techniques," "practices," or "systems," I would call *schools of thought*. These schools are simply names that are given to the process of study by which people associate with certain teachers. The holistic perspective provides a *point of view* from which to evaluate all of the elements of the personal health plan and the plans made with health professionals.

Two Traditions of Scientific Inquiry

Schools of thought are fundamentally historical phenomena. In three volumes entitled *Divided Legacy*, medical historian Harris Coulter (1975) has documented the history of conflicts between the two predominant traditions of thought.

Coulter guides us in examining a fundamental vocabulary of scientific assumptions that will help clarify roles and responsibilities in health care. These assumptions have been visible in medical thought and practice for 2000 years and are more apparent than ever today.

Coulter observed that the most significant contributions to medicine were made by the purest thinkers of either school. Practicing physicians have drawn upon both viewpoints, taking information which most suited their interests, skills, and abilities. By understanding the scope of this spectrum, the nature of skills or services can be determined that suit one's needs and desires at any particular point in time. This dipolar conceptual framework also offers a basis for clarifying the relationships between medicine and holistic practice. It will also reduce the kinds of misunderstandings which lead to malpractice litigation. Granted, some malpractice cases are clearly actual physician errors (sponges remaining inside surgical patients, or patients with ruptured appendices being treated for gas pains, for example). Other cases may arise from the failure of a physician to disclose vital information about risks to the patient and subsequently leading to the patient's suffering consequences from a treatment which had risks the patient did not expect or consent to. However, most medical malpractice cases suggest that a fundamental misunderstanding of the allocation of responsibility between doctor and patient could be clarified by making contracts which identify medical responsibility in terms of diagnosis and treatment of pathology, (Green, 1976). This framework will also encourage new professional roles to emerged in a meaningful way.

Assumptions of Empirical and Rational Traditions

Coulter (1975) notes that the Empirical tradition considered observation and experience to be the only source of knowledge, while the Rational tradition placed a premium on logical analysis. The Rationalists relied upon hypotheses to give structure to experimentation and research in order to focus on cause and effect. Empirics were not interested in causation. They sought to stimulate the growth or balance of the "life force," which they confessed inability to explain and even questioned whether its dynamics were

SCIENTIFIC ASSUMPTIONS OF THE EMPIRICAL AND RATIONAL SCHOOLS OF HEALTH AND HEALING

Empirical School		Rational School
Observation and experience are source of knowledge	**Premise**	Logical analysis is the source of knowledge
Studies growth or balance of "life force" or vital energy	**Object**	Studies disease entities
Workings of life force unknowable	**Hypothesis**	Established hypothesis of causation
Studies peculiar symptoms to determine uniqueness of individual	**Subject**	Classified common symptoms into disease entities
Subjective sources of data	**Source**	Objective sources of data
Individual is energetic and has a spiritual dimension	**Nature**	Individual is material or mechanistic, chemical
Treatment by similars sometimes creating healing crisis	**Treatment** (or treatment approach)	Treatment by contraries sought removal of symptoms
Health is internal and environmental balance	**Context**	Health is absence of disease
Holistic Methodology	**Methodology**	Atomistic or reductionistic methodology
Client	**Authority**	Doctor

knowable by man. The Rational tradition evolved the concept of the disease entity (pathological condition), which was arrived at by identifying "common symptoms" in a class of patients. The Empirics said that the "peculiar symptoms" were the most important ones because they indicated the uniqueness of the individual. These peculiar symptoms suggested the basis for selecting a remedy or therapy which acted on the whole person rather than just on the disease. Rationalists sought to eliminate the disease and its symptoms usually by treating with *contraries*, attempting to stop the symptoms. Empirics saw symptoms as manifestations of the healing process. They offered treatments *similar* to the symptoms, often generating an aggravation of symptoms perceived as a healing crisis. From the Empiric viewpoint, cure lay in the pattern of change in the symptoms, not just their palliation or amelioration.

The Rational physicians took an atomistic or reductionistic view, focusing upon progressively smaller components. They evolved a rather mechanical concern for the efficient workings of the various body parts. Empirics emphasized the relatedness of mind, body and emotions and could be described as being more concerned with energetics than mechanics. For example, homeopathy and Chinese medicine are Empirical sciences. The use of antibiotics for infections is based in Rational Science.

Examining the assumptions of the two traditions in medical philosophy leads to the following comparisons. (Figure 1).

Pathology and Holistic Practice

In the past century, medical thinking has been so dominated by the Rational tradition that its practice is legally defined in terms of the diagnosis and treatment of pathological conditions (Note 1).

Standards of practice have almost completely forced Empirical practices out of the profession by labeling them as unscientific. Rational medicine's success is marked by a current Webster's definition of Empiricism as "unscientific" and "quackery," while Coulter's work indicated that Empirical science simply proceeds on the basis of different assumptions. He suggests that a "science" is fundamentally a methodology for collectiong information.

If today's holistic practices are viewed in Empirical terms as a means of nourishing the life force (which is not prohibited by §2052) a framework can be constructed for understanding the relationship between responsibilities of holistic practitioners and physicians.

Since the early 1900's when the Flexner Report determined teaching Empirical practices to be unscientific, medical education in the United States has focused on and is dominated by the diagnosis and treatment of pathological conditions. Health is viewed in this pathology model as the absence of disease, and not (as "holistic" practitioners would say) entire in its own right and incorporating the human environment. Thus the tools at the physician's disposal are diagnosis and treatment tools, not "growth and prevention" tools. The physician, in our society, sees the sick in the professional setting, and rarely the healthy.

Today's physicians are practitioners of the Rational tradition. Their science has evolved to a degree of specialization and clarity worthy of respect and admiration, but should not be confused with attempts to stimulate and nourish the growth balance of the life force. The Rational posture of medical education makes it difficult for the best physicians to practice Empirical perspectives, as their training is dominated by the pathology model. Physicians who have approached the mastery of any holistic practice tend to go through a long and painful struggle attempting to fit new information into familiar analysis and thought forms.

Dissecting Medical Responsibility

Physicians often play the role of sympathetic ear, father figure, information source or confidant. If the client's purpose in talking to a doctor is any of the above, have them state it at the outset. However, if they want to hire a doctor for what he is trained to do, it is helpful to think about the specific skills for which they are well trained.

Why People Seek Health Professionals

Professional responsibilities in health care realtionships may include:

1) Diagnosis of a pathological condition.
2) Treatment of a pathological condition.
3) Monitor changes in a pathological condition.
4) Watch for the development of a latent or potential pathological condition.
5) Advise regarding likely outcome or prognosis.
6) Nourish or balance the life force/vital energy.

Only the first five are exclusively reserved to licensed doctors.

Other responsibilities, frequently assumed by health professionals, though not always necessary to the performance of their professional responsibility, include:

1) Being someone to talk to.
2) Providing sympathy.
3) Being an authority figure.
4) Providing moral or emotional support.
5) Making decisions for clients.
6) Providing information to clients concerning health and/or pathology.

The first skill is diagnosis. Does the client manifest any set of symptoms which puts him in a recognized class of patients associated with a recognized disease? What does medicine know about this disease, its course and conse-

Note 1: The California Medical Practices Act, Section 2052 of the Business and Professions Code, states: "Any person who practices or attempts to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition of any person, without having at the time of so doing a valid, unrevoked certificate as provided in this chapter, or without being authorized to perform such act pursuant to a certificate obtained in accordance with other provision of law, is guilty of a misdemeanor."

quence? Another skill is providing information about or performing the accepted treatment for this disease. A third skill is the ability to monitor a disease during self-healing. This skill is particularly valuable in holistic health, because vital energies may be restored to a point where a regular prescription for medical treatment becomes an overdose in cases where holistic practitioners are working in conjunction with medical practitioners.

If physicians are offering holistic practices, understand that the medical training did not prepare them for this work. Learn about their training and ability to provide this service. Recognize that many "holistic doctors" apply holistic practice as alternative treatments for pathology. Competency may be sacrificed by trying to get both kinds of services from the same person.

One should consider making separate plans that address both concerns about pathology and the stimulation of the body's self-healing abilities/mechanisms. This will help demystify medicine and give some perspective on clarifying expectations with physicians. Treat the issues separately, especially when both kinds of services are sought from a "holistic physician."

A plan to satisfy *concern* about pathology may not require seeing a physician. It may be appropriate, though, to plan to see a doctor when the client's concern about pathology reaches a certain level. Diagnostic services may be retained without contracting for treatment.

How Do We Recognize Expressions of Vital Energy

The purpose of a plan to obtain holistic health services in the Empiric tradition should relate to changes of the following kind: (Not an all-inclusive list.)

Pain	Creativity
Physical balance	Self esteem
Behavior patterns	Energy level
Tension patterns	Mental clarity
Breathing patterns	Spontaneity
Patterns of emotional expression	Centeredness
Ability to become calm	Spirit

Government programs to nourish the vital energy should be developed that are distinct from current programs aimed at treatment of diseases (National Cancer Institute, Center for Disease Prevention and Control, etc.).

Defining Professional Responsibility in Holistic Practice

Methodolical thinking about the roles of holistic practitioners has not yet begun in earnest. If holistic work is to be appreciated as distinct from and complementary to medical practice, discovering the differences between the two is necessary to structuring relationships with holistic practitioners more precisely. This delineation will also moderate the possessiveness over perceived professional territory. What kinds of agreements are appropriate to nourishing vital energy (Note 2.) The purpose of making plans with holistic practitioners should relate to how these practitioners perceive and work with vital energy. Satisfaction in the relationship will depend on how well a practitioner's skill lines up with a client's interests. Suggest to the client that they examine how they experience their own vital energy when they are defining their objectives.

Each person is unique; individual interests will lead to the right practitioner for any given moment. Each individual has his or her own sequence for exploring different paths of growth. Learning to perceive and follow this inner sense of timing is an important part of understanding what healing really is about.

Remember that holistic perspectives may promote an aggravation of experiences which are seen as symptoms of pathology by the Rational medical tradition. These experiences can sometimes be expressions of healing.

Plans with holistic practitioners should include discussions about healing crises. Anticipate that working from this perspective may entail feeling worse before getting better. Also, consider that Empirical means of healing tend to work more slowly than the remedies of Rational medicine.

Examples of Means by Which We Can Nourish, Stimulate or Balance Vital Energy

Love	Homeopathic remedies
Touch	Colors
Suggestion	Fasting
Meditation	Harmonic sounds
Awareness training	Herbal cleansing
Nutritional changes	Colonic irrigation
Emotional expression	The essence of flowers
Spiritual fulfillment	Acupuncture
(Not an all-inclusive list).	

The Use of Written Instruments

Contracts with health professionals need not be in writing. They could be written down, but they must be negotiated verbally. They need not be written up as "contract." Written notes of either party are legal evidence of the agreement. Professional records and correspondence between the parties can also evidence the agreement. Written instruments should contain as much information as is deemed necessary by both practitioner and client and should acknowledge risks, if any, of procedures which are experimental. Attractive brochures given to the client may describe the practice and the practitioners' experience. Written instruments can and should outline the patient's rights and responsibilities. At the bottom line, however, the best evidence is always the conduct of the parties.

Elements of a Contract

A contract is an agreement between two people about the essential elements of a plan to do a job. The best contracts are the simplest plans. Three basic elements of a contract are: (a) purpose, (b) complementary responsibilities, and (c) term. The first element explains what the job is. The second says what each person may be expected to do. The

Note 2: Hereafter, "vital energy" is used to suggest the current thinking about what has been referred to historically as the "life force."

third defines the time frame in which the job is planned. Defining a term provides an opportunity to modify or renew the agreement.

Access to and Ownership of Medical/Health Records

Client/patient access to medical/health records is an unsettled question, legally. The client/patient has a right to the information, but the practitioner or facility owns the document. Access to records is a negotiable issue. Make an agreement about the availability of records at the outset. All parties can then rely on the agreement in the future. Making these agreements will create the right which courts are now only beginning to examine. Arbitration agreements are becoming widespread in the medical profession. Typically, they are not explained to the patients in any way, but are handed with a bundle of other papers to the patients who are told to sign them before the doctor will see them. Patients do not realize they are waiving substantial legal rights, such as the right to a jury trial.

Self-Awareness Journal

Personal journal entries are valuable not only as evidence of the agreement between the client and the practitioner, but as tools for focusing awareness, an essential element of Empirical health practices. Change in self awareness is a manifestation of the growth of the life force. Self awareness journal keeping is an aid in working with all Empirical practitioners. For example, homeopathic case-taking records impressions in the patient's exact words, relying totally on the subjective experience.

Arbitration

Written agreements may be used to substitute arbitration for litigation as the process for settling disputes. Arbitration agreements are the first expression of contract thinking in health relations. Unfortunately, they deal with only one issue; the choice of forum for resolving disputes. They do nothing to suggest how to make the relationship work. They focus attention upon both party's anticipation of failure. If arbitration is the desired choice of the parties, agreement upon this issue should be seen in the context of agreement on the responsibilities that are necessary to making the relationship succeed.

Beware of Disclaimers

Watch out for written statements purporting to be disclaimers or waivers of liability. They are usually unnecessary and may be used to argue knowledge of unlawful intent. They are likely to be disregarded by courts as being against public policy unless they appear in the larger context of a well defined relationship. When the relationship is called into question, it will be judged by what the parties do, not by what they say they are doing.

On the other hand, written answers to questions concerning elements of progress in the relationship are statements about the nature of the work being done. A questionnaire about body awareness would read quite differently than a history of symptoms, though both provide a valuable clinical focus for their respective practitioners.

The Legal Authority for Contract in Health Relationships

The idea of contracting individual responsibilities in health care relationships is relatively new, historically speaking. University of Chicago Law Professor Richard Epstein (1977) has laid the foundation for legislative and judicial acceptance of medical contracts in two articles which describe the natural evolution toward contract-thinking in other fields. He shows how other fields of law have progressed to where principles of contract govern risks which have previously been decided by principles of common law negligence.

Court-made law on health contracts will not appear until courts examine controversies in which the parties have made contracts. The courts will evolve doctrines of contract as they decide these cases. The Dana Ullman Case (1977) was the first judicial recognition of health contracts. There, the district attorney and the trial court recognized "a regular practice of contracting with clients in order to clarify the role of non-medical health practitioner" as a basis for dismissing criminal charges for practicing medicine without a license. However, other courts are not bound by this settlement because the case was dismissed without trial. Consequently, there was no issue for the appellate courts and appellate courts possess the exclusive power to bind other courts.

The judicial recognition of contracts defining professional responsibility will require a test case. Eventually, there will be many cases in which the issue will be recognized because the court will not be so interested in the question of contract as in deciding which party should prevail in a dispute over the contract. However, both the test case and those that follow will be those in which the parties failed to make *clear* agreements and consequently generated a dispute. Most legal problems start this way.

Since provider-client agreements are an evolutionary step in health care relations, courts will assess the validity of such contracts on an individual basis. The principle factor in deciding to uphold such agreements will be their reasonableness, given the likely disparity in apparent bargaining power created by professional comprehension and client need. Disclosure of information which is known or should be known to the practitioner will be a crucial element in evaluating the reasonableness of the circumstances. All contracts are vulnerable to attack on the grounds that the parties failed to achieve a meeting of the minds about issues fundamental to their agreement. If the making of agreements is undertaken as clarification of the planning process and its purpose is to further the working relationship, then it will increase the likelihood of achieving expectations. The making of agreements will minimize the risk of misunderstandings which can lead to failure in the relationship and disputes over responsibility. The thoughtfulness with which agreements are made will be the bottom

line in determining whether the agreement will withstand a challenge to its validity.

Since health care relationships are fundamentally contractual in nature (their terms are *implied* when they are not expressly defined), there is really no avoiding the issue. Either good agreements are made or some kind of trouble and dispute ensues.

Financial Responsibility

The means of payment is an essential element of agreements. Questions about payment for holistic services by MediCal and other third-party sources (Medi-care, private insurance companies) are only beginning to surface. Perhaps it is only American to focus on financial responsibility before exploring working responsibilities very thoroughly. Requesting payment for holistic services through our current MediCal (California) system requires describing the work as diagnosis or treatment for some specific pathology. If the State is told this, is the patient's view of themselves set into pathological terms as well? And what model is the doctor working in?

The incidence of disease and the cost of medical treatment form an actuarial basis for insurance companies to determine their income (your premiums), expenditures and reimbursement schedules. In the end, less money may be spent on treating disease if more is spent on promoting health. However, the functional relationships between medicine and holistic practice should be examined more fully before compensation schemes or government regulation are further developed. Meaningful policy changes will then become apparent.

Planning for Health

Before establishing a relationship with a health care practitioner, clients should decide their purpose and time frame on their own, understanding that they may change as needs change and as more is learned. In order to make this first plan, and before seeking professional advice, clients should answer the following questions:

1. How do you experience your self now?
2. What changes do you feel might be considered?
3. What might you ask a health educator or counselor to help you clarify your needs?
4. How can these changes be brought about without the assistance of a health practitioner?
5. What do you want from a physician or other health practitioner?
6. How and when might you evaluate your progress and consider redefining your purpose?
7. How much time and money do you wish to commit to this job?

Having a plan with oneself assists in shopping for services that help implement the plan. This will involve making new plans with others who are the resources for the fulfillment of the plan. Clients should be prepared for negotiation, collaboration and further clarification of their goals.

Make Any Simple Plan

When it comes to making an agreement, discuss any plan which increases the likelihood of achieving your client's purpose. Make it simple at first. The plan can always be changed. Whatever the plan, it will acquaint everyone with the process of clarifying implied expectations by making expressed agreements. Where achieving a working agreement fails, expectations will have been uncovered which would likely have led to disappointment later had they remained implicit.

Misunderstandings About Holistic Health Practices

Currently, there is widespread misunderstanding about the fundamental nature of holistic practice. Does each practice constitute a separate technique or system of healing? Is it the client's job to find out which technique will work or which practitioner knows the most techniques? These questions represent only the tip of the iceberg.

There are many reasons why one might seek the services of a physician or health practitioner. In addition, every health professional has his or her own unique skills and abilities. Individual responsibility for health includes being responsible for obtaining quality health care. Making clear agreements is necessary for getting this or any job done.

Clients Should Have a Purpose in Mind When Choosing a Health Practitioner

By interviewing health practitioners concerning a specific purpose before engaging their services, clients can learn about the practitioner's willingness and ability to satisfy that purpose. The objective in the interview should be to reach an agreement on the basic elements of a plan that will define complementary responsibilities and assist in fulfilling the client's purpose. For example, if a client's primary purpose is to recover from a back injury, their plan may include seeking the services of a doctor to diagnose any tissue damage and offer advice about available medical treatments. The client may also want to learn to reverse patterns of accumulating tension from a holistic practitioner.

The initial interview with a health professional should be approached as if an agent were to be hired to help implement a plan. The client's job in the interview is to learn what unique skills the practitioner has that can help fulfill the client's purpose, what the practitioner can be relied on for, and what is necessary to work with that person. These complementary responsibilities must be negotiated because they are interdependent. Also, making an agreement with a health professional is distinct from the process of looking for someone to work with. Shopping around, seeing at least two people, will help develop clarity on the client's basic plan.

Where is the Power to Make Change?

Until now, most of my work with contract principles has been solving legal problems generated by the failure to

make clear agreements. The greatest value of thinking contractually about health is that it helps identify responsibility. This enables the responsibilities of evolving nonmedical roles to be examined and defined more clearly.

The Rational model of pathology has been the only context within which we have thought about health in the past century. We are unaccustomed to thinking about nourishing the "life force," let alone taking seriously those who attempt to address this challenge scientifically. Coulter demonstrates that while there has been little public recognition of Empirical concepts in the Western world, some doctors have explored Empirical premises for years, attesting to their value while fighting a losing battle for recognition within their profession. Understanding the distinctions between the Rational and Empirical assumptions will permit appreciation of both perspectives and their practices.

The holistic health movement is today's expression of the Empiric tradition. Its strength is among practitioners who are not medically trained. As it appears that most "holistic doctors" work in a Rational model and employ holistic practices as alternative treatments for disease, medical training may even be an obstacle to study and applying Empirical practices. Today, the Rational influence is not just the strongest tradition in the medical profession; it is the only operative model. If medical thinking governs our development about holistic health practices, we will forfeit whatever benefit there may be in having a health industry which offers us a balance of Rational and Empirical services.

Rational standards of practice in medicine have already judged Empirical perspectives to be unscientific. The influence of Rational standards within the profession has determined the direction of research (Note 3) and will control professional responsibilities in the field unless the professional community and an educated public recognize the need for a different kind of service.

Complaints that our current system of health care takes advantage of people are growing louder. Most people think that someone—the state, the American Medical Association, Uncle Sam—should do something about it. Enough, already! Every gardener has the power to determine how his garden grows. Contracts are tools. Use them to create changes that are important to you personally, and we will all work together to incorporate these needs at institutional levels.

The holistic practitioners of the 19th century were homeopaths, herbalists and osteopaths. The Empiric practitioners of the 21st century are the holistic practitioners of today. If preservation of the integrity of both Rational and Empirical traditions of thought about health is desired, independent professional recognition of holistic practitioners is necessary. The groundwork for this is initiated by recognizing individual needs for health services in the Empiric tradition and by making agreements with all health professionals which provide for both forms of service.

Note 3: Most scientific research concerning stress has been conducted in the context of stress-related pathology. An example of holistic research into stress may be seen in Peter Levine's work which evaluates stress as a function of the dynamic capacity of an organism to interact with its environment. It is measured in terms of homeostatic resiliance on motoric, automatic, and metabolic levels.
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The People of the State of California vs. Dana Ullman, March 9, 1977. Municipal Court Oakland-Piedmont Judicial District. County of Alameda, No. 98158.

Suggestions for Further Reading

"Holistic Practitioners Unite—It's time to learn to fly" Somatics, V. 3 N. 4, Spring 1982, which may be obtained, together with a membership packet describing the structure of a model practitioners association, from California Health Practitioners Association, P.O. Box 8467, La Jolla, CA 92038.
"Patients Who Refuse Medical Treatment" Applebaum & Roth, M.D.s JAMA V. 250, No. 10, Sept. 9, 1983.
"Adding Insult to Injury: Usurping Patient's Prerogatives" J. P. Kassirer, M.D., New England Journal of Medicine, 4/14/83.
"Allocating Responsibility by Contract" J. Green, Medicolegal News, V. 8 N. 5, 10/80 Amer. Soc. of Law & Medicine.
"Contracting Out of the Medical Malpractice Crisis" R. Epstein, JD Perspectives in Biology and Medicine, Winter 1977.
"The Health Care Contract: Key to Minimizing Malpractice" Prof. Liab. Newsl., March '82 Insurance Corp. of America.
"Contracts With Your Doctor?" J. Green, New Realities, V. 2, N. 1, 1978

These published and several unpublished works comprise the reading for a Professional Responsibility Training designed and conducted by the author for health practitioners, continuing education programs, and private practices. For information about the availability of these readings, and the programs, lectures, and related consulting services, write the author in care of P.O. Box 5094, Mill Valley CA 94942.

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Scientific Assumptions Of Empirical And Rationalist Health Care Systems*

Empirical Thought		Rationalist Thought
Observations and experience are the primary sources of reliable knowledge.	*Premise*	Logical analysis is the primary source of reliable knowledge.
Growth and balance of the vital energy or life force.	*Object*	The disease entity.
The ultimate workings of the vital force are unknowable.	*Hypothesis*	The ultimate mechanisms of the body are knowable.
The physician studies the peculiar symptoms to determine the patient's uniqueness.	*Subject*	The physician classifies the common symptoms into disease entities or syndromes.
The physician's and client's subjective observations.	*Source*	Objective measurements.
The individual is energetic and spiritual in nature.	*Nature*	The individual is material, chemical, and mechanical.
Treatment by similars which may provoke a healing crisis.	*Treatment*	Treatment by contraries to oppose, and thus remove, the symptoms and pathology
Disease and health are on a continuum; balance yields health, imbalance yields disease.	*Context*	Health and disease are discrete, and the opposite of one another.
Holistic, seeking homeostatic balance.	*Methodology*	Atomistic and reductionist, repairs parts.
The client.	*Decision Maker*	The physician.

*Based on Divided Legacy: A History of the Schism in Medical Thought, Coulter, H., Washington, D.C., Wehawken Books, 3 vols. Adapted from the introduction to *A Holistic Practice Forum*, a seminar/consulting format, Green, Jerry A.