

It's Not Easy Being Me:
Ethical Dilemmas Involved in Representing
Professionals

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Representing Physicians

- FACT PATTERN:

A man dying of AIDS-related complications is admitted into a hospital and falls into a coma. He has never told his family about his disease. His family – including his health care proxy – arrives at the hospital and wants to know what is happening to him. Can the physician disclose his disease?

Representing Physicians

- Relevant Ethical Rules
 - AMA Principles of Medical Ethics, Principle IV
 - AMA Code of Medical Ethics, Opinion 3.2.1
- Relevant Law
 - New York Public Health Law § 2782
- Answer: No, unless the information is needed to provide the patient with treatment and such disclosure is in the patient's best interest.

Representing Physicians

- FACT PATTERN:

A physician wants to prescribe medical marijuana under NYS's Medical Marijuana program. How do you advise him? And can you advise him?

Representing Physicians

- Relevant Rules
 - New York Public Health Law § 3360 *et seq.*
 - Federal Law: 21 U.S.C. § 812
 - Ethical Rules: NYS Bar Opinion 1024
- Answer: Not clear!

Representing Lawyers

- FACT PATTERN:

An attorney who represents a client in litigation is asked to represent the opposing party's lawyer in another matter. Can the attorney take on this representation?

Representing Lawyers

- Relevant Rules
 - New York Rules of Professional Conduct, Rule 1.7
 - NYS Bar Opinion 579
- Answer: Yes, *but* there must be full disclosure to the clients of both lawyers in the litigation *and* both lawyers must believe that the representation will have no adverse effect on their professional judgment.

Representing a Criminal Defense Attorney

- FACT PATTERN:

A defendant in a murder case walks into his attorney's office and gives him the murder weapon and tells him to keep it. How should you advise the attorney?

Representing a Criminal Defense Attorney

- Relevant Rules

- ABA Model Rule 3.4(a)
- ABA Criminal Justice Standards for the Defense Function, Standard 4-4.7
- Restatement (Third) Law Governing Lawyers §119 (2000)
- New York Rules of Professional Conduct, Rule 3.4(a)

Representing a Criminal Defense Attorney

- What do the courts say?
 - Cannot suppress or conceal physical evidence
 - May have to affirmatively turn over physical evidence
 - But, no affirmative obligation to disclose evidence that is not in an attorney's possession
- Answer: The attorney can take temporary possession of the evidence to examine/test it, but must then alert the prosecution.

QUESTIONS?