

Taking a Stand

This column is a sequel to a previous one, "Moral Courage" (AACAP News, January/February 2003), which examined the role of individuals in taking an ethical stand in spite of potential risks. The focus of this column, is the matter of professional organizations taking a stand as an *amicus curiae* (friend of the court) or individuals doing so as representatives of these organizations by testifying on issues affecting public policy and the well-being of our patients.

My first foray into this area occurred in the late 1980's when I co-chaired AACAP's Committee on Rights and Legal Matters and our opinion was solicited in regard to whether AACAP should sign onto a brief in the now landmark case of *Thompson v. Oklahoma* (56 USLW 4892 1988), which dealt with juveniles and the death penalty. As is typical of many of these briefs, our input was sought at the last minute and I recall our frustration with the language of the brief, which ultimately led to our decision not to sign on. I have since participated in amicus briefs as an individual and as a member of the American Psychiatric Association (APA) Council on Psychiatry and Law, which, along with the APA Committee on Judicial Action Committee, reviews briefs on which the APA has been requested to sign.

Why should professional organizations participate in legal briefs or concern themselves with legal reform? Section 7 of *The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry*, reminds us that, "A physician shall recognize a responsibility to participate in activities contributing to an improved community." Section 7.2 notes, "Psychiatrists may interpret and share with the public their expertise in



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the various psychosocial issues that may affect mental health and illness." It cautions that psychiatrists need to be mindful of their separate roles as dedicated citizens and experts in psychological medicine. Relevant portions of AACAP's code of ethics, *Principles of Practice of Child and Adolescent Psychiatry*, include Principle II,

which refers to the need to reduce the deleterious effects of the actions of other individuals or of society at large on the well-being of children, adolescents, and families. Principle III reminds us to avoid exercising influences principally for our own gain or aggrandizement. Principle V refers to the need to promote and maintain the dignity and self-respect of those served.

All of this sounds very straightforward and altruistic, yet ethical conflicts may arise, such as:

1. Should a psychiatric organization risk alienating some members by taking a stand on issues such as capital punishment, the execution of juveniles, freedom of choice, overturning state laws (*Lawrence and Garner v. State of Texas*) which prohibit homosexual conduct, cases dealing with parental capacity of homosexuals, or the current case on affirmative action (*Grutter v. Bollinger*) dealing with racial preferences at the University of Michigan and its medical school?
2. Can a few members, both elected and appointed to leadership positions in psychiatric organizations, speak for the entire membership?
3. Can organizations use membership dues to represent views that may be counter to those of some members?
4. Should we take positions on social or political issues that do not directly involve our patients or members? Where does one draw the line?
5. To what extent should we compromise our views in signing on in an amicus brief whose language is not particularly to our liking?
6. What is the risk that professional organizations might take self-serving positions designed to promote their public image or promote guild issues?

These conflicts may arise not just on the national level but within regional organizations, as well. Should a quorum of members be required to move forward endorsing bills or testifying on

Catchers in the Rye 2003 Advocacy Award Nominations



The Academy recognizes and promotes advocacy for children as part of the report of the Task Force on Advocacy for Underserved Children and Adolescents, chaired by **Jacqueline Etemad, M.D.**, through its annual *Catchers in the Rye* Advocacy Award. The name of the award is taken from AACAP Past President **Dr. John Schowalter's** Presidential Address in 1989 where he quoted *The Catcher in The Rye*'s main character, Holden Caulfield's response to what he wanted to be when he grew up: "I keep picturing all these little kids playing some game in this big field of rye and all. Thousands of little kids, and nobody's around—nobody big, I mean—except me. And I am standing on the edge of some crazy cliff. What I have to do, I have to catch everybody if they start to go over the cliff." The Task Force report clearly reminds us of the important work done on behalf of children—much of which goes unrecognized.

To better recognize outstanding advocacy efforts, the Academy established three advocacy awards to: 1) recognize an individual advocate for children (the individual must be a member of AACAP), 2) recognize an AACAP component that best advocates for children, and 3) recognize a regional council program whose activity best highlights the contributions of AACAP's councils on behalf of children. Nominations can be submitted for each award, and should include a brief paragraph describing the work of the nominee. The Assembly Executive Committee will serve as the selection body for these awards, which will be presented at the Assembly Meeting at the Annual Meeting in October. Forward your nominations to Dr. Sandra Sexson, Assembly Chair, AACAP, 3615 Wisconsin Avenue, N.W., Washington, DC 20016, Attn: Tricia Martinez by June 6, 2003.

them at a state level? Unfortunately, political apathy reigns in many state psychiatric organizations and it is usually the energy of a few individual members that manages to have an impact on the legislature. We are in a unique position to educate legislators on issues relating to the well-being of children and their families, yet how many of us have ever set foot inside a State House or generated or participated in briefs on behalf of our regional organizations of child and adolescent psychiatry? It would appear that, according to our ethical code, we have a clear mandate to do so regarding issues impacting on the emotional health of children and their families. Some issues such as parity and universal access are far less controversial than those impacting the moral and ethical beliefs of individual members. How do we balance personal beliefs on issues of affirmative action with what is best for patients and the well being of society? Can we condone

intolerance and discrimination when it is clearly detrimental to the emotional health of victims and perhaps those who perpetuate it as well? The recent film, *Far From Heaven*, reminds us of the pervasive suffering that ensues as a result of intolerance.

AACAP has developed policies and procedures for responding to requests to join an *amicus* brief. It will only consider signing on briefs that deal with the well being of children and adolescents and then only if there is sufficient time in which to review and comment on the draft. The requesting party must agree to consider comments written by AACAP in finalizing the draft of the *amicus* brief. Once these policies are agreed to, the draft brief and background information are circulated to the AACAP Executive Committee and members of related committees who must decide whether or not AACAP should become a friend of the court and to forward comments to the committee chair who incorporates them into

recommendations to the Executive Committee. Comments and decisions about whether or not the AACAP should be a friend of the court are then sent to the requesting party.

In speaking with AACAP staff, it appears that the main problem AACAP has experienced in regard to signing onto briefs has to do with time constraints that do not allow for adequate weighing of the issues. It is, indeed, unfortunate that so many briefs come to us under the wire. Regarding controversial issues, AACAP usually will not go forward with a brief unless action is favored by a majority of Executive Committee members and consulted committee members. Still unresolved are some of the questions raised above regarding possible ethical conflicts. ■

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