

## Dual Agency and the Medical Profession



By Brian Madigan LL.B.

The laws of agency have their origins in the 12th century BC. The early origins of the Hippocratic Oath for doctors arose in the 4th century BC. It is no surprise that there are startling similarities between the legal obligations owed by agents and the legal obligations owed by **doctors** to their

**patients**, since this is simply a specific category of an **agent-principal relationship**.

There are some duties and obligations owed to clients that arise out of the common law of agency:

- Loyalty
- Confidentiality
- Obedience
- Competence
- Accounting
- Disclosure
- Best interests

Doctors followed these same duties and obligations when dealing with their patients, at least until about 200 years ago. Then, modern medicine intervened. Doctors became responsible to other third parties. Someone else was paying the bill, so their interests needed to be taken into consideration. Historically, doctors were employed by the military and treated the sick and injured. Who received care was influenced substantially by the military and not by the patients in need. Today, doctors have many masters, not just two, which of course would be complicated enough. A doctor will be entrusted with responsibility to:

- Treat the patient
- Utilize scarce resources
- Expend insurance moneys
- Administer social programs (workers compensation, occupational health)
- Report to employers
- Report to licensing bodies on fitness to practice (professions)
- Report to transportation authorities in terms of fitness to drive
- Report child abuse (fitness to parent)
- Entitlement to restricted medications (writing prescriptions)
- Access to health insurance
- Access to benefit plans
- Assessment of injuries for legal system

The above list is not exhaustive, it is just a sampling of the various roles that a doctor practising modern medicine faces every day. The patient is not the sole and only principal. So, others may be interested in the patient's condition, particularly an insurance company paying the bill, or the province should the patient lose the ability to operate a vehicle. Who has the obligation to report? Doctors, of course! Isn't that a conflict of interest? Shouldn't they just serve one master and keep quiet? Perhaps!

But, that is not how modern medicine works. This is a profession. **Doctors** must weigh and balance each of their duties and responsibilities carefully. They may be serving a **half-dozen separate masters** in every decision they make.

When it comes to medicine, we are not really talking about dual agency, we are likely talking about triple agency or quadruple agency. This is expected, this is the norm. Doctors as professionals are expected to balance the various competing interests and arrive at an independent and unbiased decision. They are to render a "professional opinion", they are to bring "professional judgement" to bear on their cases. They decide which of two patients gets treated in the ICU.

When we review the role of the legal profession, we see that conflicts are rare. When we look at the medical profession, we see that conflicts are commonplace.

So, what does all this mean to realtors? What about dual agency? Is it appropriate to compare it to the legal profession? Or, should it be compared to the medical profession? What is right, and what is fair?

By medical standards, dual agency should be fine. It doesn't occur that frequently, and when it does, it can be resolved to the client's interest.

By legal standards (comparing realtors to lawyers), dual agency is essentially wrong. It should not be undertaken at all. There is no appropriate resolution.

All in all, dual agency itself seems to be more of a fact of life. The proper questions should be directed to the manner in which it is handled once it arises rather than outlawing it completely or permitting it without recourse.

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